UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
E. GLUCK CORPORATION,	Civil Action No. 08 CV 3466 (VM)
Plaintiff, v.	
ADAM ROTHENHAUS,	
Defendant.	

### AFFIDAVIT OF BERNARD FERNANDEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

BERNARD FERNANDEZ, being duly sworn, deposes and says:

1. I am Executive Vice President of plaintiff E. Gluck Corporation ("Plaintiff") and as such am fully familiar with the facts and circumstances set forth herein. This Affidavit is respectfully submitted in support of Plaintiff's Motion for a Preliminary Injunction to prevent defendant Adam Rothenhaus ("Defendant") from continuing to use the NOW and THE NOW WATCH marks in connection with the promotion, advertisement, distribution, marketing and sale of watches and from continuing to maintain and operate a website under the domain name "www.thenowwatch.com."

### Plaintiff's Use And Rights In the NOW Mark

- 2. Plaintiff has been selling watches nationwide since 1956. At present, Plaintiff is one of the largest wholesale merchants of watches in the United States.
- 3. Plaintiff sells watches under various brands, and for over twenty years, *i.e.*, since 1986, Plaintiff has continuously marketed and sold watches under its

NOW trademark. Copies of a corporate profile and a brochure describing Plaintiff's brands, including its NOW line of watches, are attached hereto as Exhibit A.

- 4. Plaintiff's NOW branded watches have been widely advertised over the years. Copies of a representative sample of advertisements in major magazines for Plaintiff's NOW branded watches are annexed hereto as Exhibit B. For example, included in this exhibit are: a NOW watches advertisement that ran in the magazine for the JA Show in New York in February 1990; advertisements for NOW watches that appeared in December 1999 in Self, Bazaar, Elle, Redbook, Ladies' Home

  Journal, and In Style; advertisements for NOW watches that appeared in May 2000 in Harper's Bazaar and Elle; and pages from the following magazines that describe Plaintiff's NOW watches: Self in July 2003; Teen Vogue in May 2004; in Touch in September 2004; Parenting in October 2004; and Lucky in November 2004.
- 5. Plaintiff's NOW branded watches have been, and continue to be, sold nationwide to the public through the largest retailers in the United States, such as Wal-Mart, Target, J.C. Penny, Kohl's, Sears, K-Mart and many others. Copies of a representative sample of brochures, advertisements, in store displays and catalogs, all promoting Plaintiff's NOW branded watches are collectively annexed hereto as Exhibit C. These include selected pages from: Plaintiff's J.C. Penney catalog for Fall 1993; a J.C. Penney circular in November 1997; Plaintiff's J.C. Penney catalog for Spring 1998; Plaintiff's J.C. Penney catalog for Fall 2003; and other brochures and in-store displays for NOW watches that have been used to promote Plaintiff's NOW watches in the last few years at large retailers, including Wal-Mart, K-Mart, Sears and J.C. Penney, among others.

6. Plaintiff's NOW watches are manufactured abroad and then shipped to the United States for distribution in the United States. Since 1986, Plaintiff has manufactured (through various contract manufacturers) and shipped to the United States for sale in the United States, millions of watches bearing the NOW mark. I have determined that in the last five years, Plaintiff has sold the following numbers of NOW watches, the vast majority of which were sold in the United States:

<u>Years</u>	Numbers of Watches Sold
2003	608,850
2004	805,400
2005	990,000
2006	1,114,600
2007	<u>1,060,000</u>
Total	4,578,850

- 7. The average retail sales price of NOW watches is between \$30-\$40. Therefore, in the last five years alone, Plaintiff's retailers have sold more than \$135 million (at retail) of NOW watches in the United States.
- 8. Throughout the past twenty two years, Plaintiff has continuously devoted a substantial amount of time, effort and resources into the promotion. advertising and marketing of watches bearing the NOW mark. Estimated yearly costs of advertising and promotion of NOW watches, including co-op advertising, are \$750,000 to \$1,000,000.
- 9. In accordance with the provisions of the Lanham Act, Plaintiff has also registered its NOW trademark in the United States Patent and Trademark Office ("USPTO") and is the owner of Trademark Registration No. 1,446,294 for watches in international class 14. A copy of Plaintiff's Registration Certificate is attached hereto

as Exhibit D. Plaintiff's United States Trademark Registration is now "incontestable" under Section 15 of the Lanham Act.

### **Defendant's Infringing Activities**

- 10. In March, 2008, plaintiff learned that without Plaintiff's knowledge. permission or consent, Defendant had manufactured, advertised, and began distributing in United States commerce, a watch that he identifies as "THE NOW WATCH."
- 11. The trademark "NOW" appears on the face of the Defendant's watch. and the mark "THE NOW WATCH" on the box in which the watch is packaged. A photograph of Defendant's watch and its packaging are attached hereto as Exhibit E.
- 12. Defendant also uses THE NOW WATCH mark and the "tm" symbol throughout his website. Defendant also indicates on a page on his website that he is seeking to market his watch to a "diverse range" of consumers through various channels of trade, including "mainstream shopping malls." Copies of pages printed from Defendant's website are attached hereto as Exhibit F.
- 13. On March 25, 2008, Plaintiff's attorney sent a letter to Defendant demanding that defendant cease using the name "The Now Watch", the domain name, thenowwatch.com, or any other confusingly similar term in connection with the sale of watches. When Defendant refused to stop, on April 9, 2008, Plaintiff commenced the instant action.

Case 1:08-cv-03466-VM-RLE

- 14. Plaintiff has requested preliminary injunctive relief since the continued use of the NOW and THE NOW WATCH names by Defendant is causing irreparable harm to the conduct of Plaintiff's business. In particular, because of the infringing use of the NOW and THE NOW WATCH names by Defendant, the exclusivity of the NOW mark is being undermined. For example, my attorneys conducted a search on Google using the words "now" and "watch" and the first non-paid result is to Defendant's website, www.thenowwatch.com. Just above this result is a link to Target's website where Plaintiff's NOW watches are available for purchase. A copy of a page showing Google search results for a search using the words "now" and "watch" is attached hereto as Exhibit G. Given the proximity of these search results, confusion in the marketplace is inevitable if Defendant is permitted to continue selling NOW watches.
- 15. It has taken many years for Plaintiff to build up its reputation as a manufacturer of quality watches and as the exclusive source for NOW watches.

  Many of Plaintiff's customers purchase products from Plaintiff because Plaintiff is the only company that sells products of a certain quality and type and under this widely-recognized name.
- 16. If Defendant is permitted to continue to sell NOW watches, Plaintiff may lose sales. Since all of Plaintiff's customers are large retailers, the loss of a single customer would cause a significant loss of business.
- 17. Further, since Defendant is an individual, he likely does not have the resources to compensate Plaintiff for such lost business.

18. Accordingly, on behalf of Plaintiff, I respectfully request that Defendant be immediately precluded from selling, promoting and advertising watches to which the name or mark "THE NOW WATCH," or any confusingly similar name or mark, is applied. Moreover, I further request, in order to prevent further harm and damage to my company's reputation and our proprietary interest in the NOW name, that Defendant be directed to stop using its website operated at the domain name, www.thenowwatch.com, and that he not be permitted to advertise the sale of watches at this website.

19. This request for relief against Defendant has not been previously sought by Plaintiff in this or any other action.

BERNARD FERNANDEZ

Sworn to before me this <u>AH</u> day of June, 2008.

Notary Public

DIANE T. WORLEY
Notary Public, State of New York
No. 01WO6114444
Qualified in New York County
Commission Expires August 16, 2008

### **EXHIBIT A**

### E.GLUCK CORPORATION

For 50 years, E. Gluck Corporation has been a major force in the worldwide watch industry and continues to dominate the marketplace with its innovative design and craftsmanship. It is a global watch network that provides retailers and consumers with products of the finest quality.

With worldwide headquarters based in New York City, the company's extensive collections of quality timepieces includes Anne Klein New York, AK Anne Klein, JLO by Jennifer Lopez and Armitron. Under its Armitron division, E. Gluck also is the premier watchmaker for top properties belonging to Warner Bros., Mattel, Dreamworks, Disney and Hanna-Barbera, among others. These brand names reflect not only the company's business acumen, but also is flexibility in creating watches for all distribution channels and retailers.

### High-Tech Distribution Capabilities:

With the company's size and strength, E. Gluck Corp. is able to back up a retailer's success at a moment's notice. The stock and shipping divisions are fully computerized to handle the latest inventory replenishment systems.

### Consistent Quality and Value:

Every watch is made with precision craftsmanship and innovative design and offers the optimum in style, quality and value for each price point and brand category — which is why E. Gluck's timepieces sell so well in stores nationwide.

### Strict Quality Control Methods:

E. Gluck watches are handled with the utmost care and are subjected to a variety of quality-control tests. Betascopes check micron plating on precious metals, and water-resistant watches are individually tested on the highest caliber monitoring equipment. E. Gluck even has designed equipment to test watch resistance to human perspiration.

### Sutton

Sutton, a division of E. Gluck Corp., was established more than 30 years ago to produce name-brand watches for sale and distribution to more than 2,000 better department stores, independent jewelers and specialty retailers nationwide. Sutton's experienced marketing team understands the challenges of presenting product at store level and creates some of the most effective in-store visual displays in the industry. Sutton's in-house print and graphics team creates everything from stunning national display magazine advertising to more than 300,000,000 promotional newspaper inserts each year, proving that the company can handle marketing production challenges on every level.

### BRANDS

### ANNE KLEIN

It could be said that the Anne Klein brand defines the way American sportswear is worn and sold today. E. Gluck Corp. is proud to have held this iconic label for longer than any other designer brand in the watch industry. The company also is pleased to have made it one of the highest-performing women's fashion watch lines in the country today.

### ANNE KLEIN

Found at retailers around the world, the new Anne Klein New York collection of women's timepieces is defined by sleek, upscale styling — featuring steel and 18 karat gold, genuine diamonds, genuine leather straps, stainless steel casebacks, logo-embossed crowns, 5 ATM water resistance, and Swiss movements.



The fashion-forward AK Anne Klein watch line represents a broad range of designer and jewelry-inspired looks. The collection features the season's hottest colors and the latest fashion details, while maintaining the distinctive AK Anne Klein image that its customer has come to expect.



The JLO by Jennifer Lopez label was created by Sweetface Fashion Co. in April 2001, when Jennifer Lopez and Andy Hilfiger joined to develop a fashion collection under her creative direction. In August of 2004, E. Gluck Corp. was chosen as the brand's official watchmaker. JLO by Jennifer Lopez Watch sales at better department stores have exceeded expectations, in part due to the fine styling of the product.

The JLO by Jennifer Lopez Watch line launched in department stores in 2004 with fashion-forward styling that coordinates with the JLO by Jennifer Lopez sportswear collection. The watches are sexy and chic, with a Hollywood-inspired drama and glitziness. The world would expect nothing less from a timepiece that bears this superstar's name.

### BADGLEY MISCHKA

Badgley Mischka has been hailed by Vogue as among the "Top 10 American Designers." Mark Badgley and James Mischka say that their style "Harks back to the glamorous Hollywood of the Forties." And their pieces have been worn by such celebrities as Madonna, Catherine Zeta Jones, Jennifer Lopez, Kate Winslet, Sarah Jessica Parker and Ashley Judd.

The new Badgley Mischka timepieces reflect the glamour and sophistication of the brand. Styles range from bold statement-making cuffs in bright leathers to watches with ladylike cases and tiny grosgrain straps. Many of the watches have cases with crystal-encrusted detailing, covered dials and sophisticated closures. Large baubles, art-deco shapes and even a special case with "fluttering petals" are featured. The line is available to fine jewelers and specialty stores internationally.



Armitron, a division of E. Gluck Corporation, creates watches with a broad popular appeal and unequalled market penetration. Passion for its brand and complete dedication to its retailers are what drive Armitron's business relationships.

Armitron prides itself on its fresh approach to marketing. An extensive in-house creative team and state-of-the-art design capabilities keep retailers on the cutting edge of marketing with eye-catching point-of-purchase displays and exciting promotions. Armitron continually receives recognition for its outstanding performance. A few of its prestigious accolades include:

- Fairchild Publications'
   "Top 100 Most Recognizable Brands in the U.S."
- Three consecutive Time Warner "Bugsy Awards" for outstanding licensee of the year.
- · Warner Bros. Hall of Fame.
- Awards and accolades from virtually every major retailer in the country.

Armitron has product categories that together cover a wide market demographic. Although Armitron watches cater to a range of budgets, each time-piece offers exceptional quality and value.

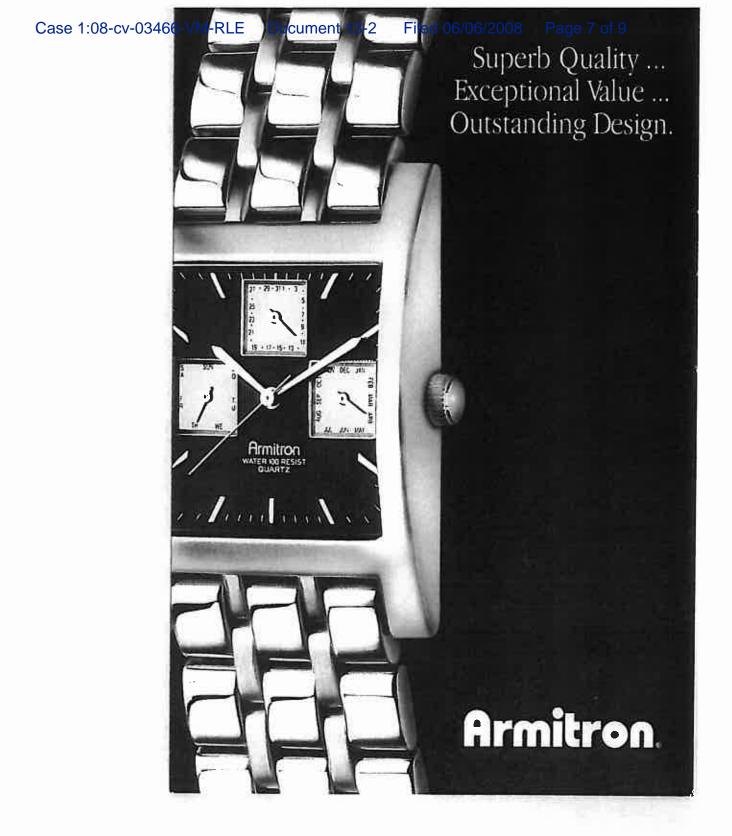
The All-Sport line of watches for men and women combines high technology with athletic styling and exceptional value. All-Sport features include dual times, 24-hour alarms, chronographs, Instalite® Night Vision displays, and durable cases.



The Now collection keeps pace with a trendsetter's wardrobe. These watches feature genuine diamonds, faceted crystals, sterling silver and gold-tone links, leather straps, petite and oversize cases, reversible bracelets, and more.



E. Gluck Corp. holds classic character watch licenses to suit its younger clientele. Popular character watches produced by E. Gluck Corp. include Looney Tunes, Scooby-Doo, PowerPuff Girls, Hot Wheels, Hanna-Barbera, Betty Boop, Batman and Shrek the Third.



# **Armitron.** America's Watch...

A Brand name dedicated to offering the American consumer timepieces that feature superior quality, and trendsetting designs at exceptional prices.

### Jontrol Methods Strict Quality

Assures you a perfect watch, every time, individually tested on the highest caliber of the art facility of over 300,000 square all the time. Created over 46 years ago, with the utmost care and are subjected metals, and water resistant watches are worldwide watch industry. In its state Betascopes check micron plating on feet, Armitron watches are handled to a variety of quality control tests. Armitron is a major force in the

monitoring equipment. Those who own an Armitron watch can be assured that they have . . .



the dial, to the integrated stainless steel bracelet. It's all in the details, from the markers on can be proud to wear, and proud to give. Careful attention is paid to every detail. The brand Armitron is one you

## Armitron Product Line

watch licenses such as: Looney Tunes, Scooby-Doo, PowerPuff Girls, Peanuts, Garfield and Bob the Builder.

All-Sport. Choose from a large selection of fine watches that will fit your lifestyles and your pocketbook. Exceptional quality and design are present by throughout all product catagories which include: Gentlemen's analogous digital multi function watches and ladies fashion styles offered in the Now collection. In addition, there are fun and exciting Characters Armitron has a timepiece for everyone; men, women, and children. digital multi function watches and ladies fashion styles offered

high-end technology and styling at A collection of sport watches for men and women that combines exceptional prices.

Features Include:



- Dual times 24-hour Alarms
- Chronograph
   Durable Cases · Instalite, Night Vision Display
- Water Resistant
   Stainless Steel



### • 1 touch Release Safety Clasps

- Unidirectional Bezels
- 3 Subdial Month/Day/ Date

## • Genuine Single Cut Diamonds

conscious women

 $Now_{ ext{@}}$ 

Features Include:

A collection of fashion-forward watch styles for today's fashion

Mand Set Genuine Austrian Crystals

Genuine Rubies & Sapphires

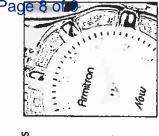
Profession of the Control

- Genuine Mother-Of-Pearl
- 23K Gold Plating Calendar Water Resistant

Now

Faceted Crystals





### Levels of Water Resistance

Watches that are labeled water resistant without a depth number can withstand splashes and rain, but should not be submerged.

> 100-165 Feet (30-50 meters) Watches suitable for swimming

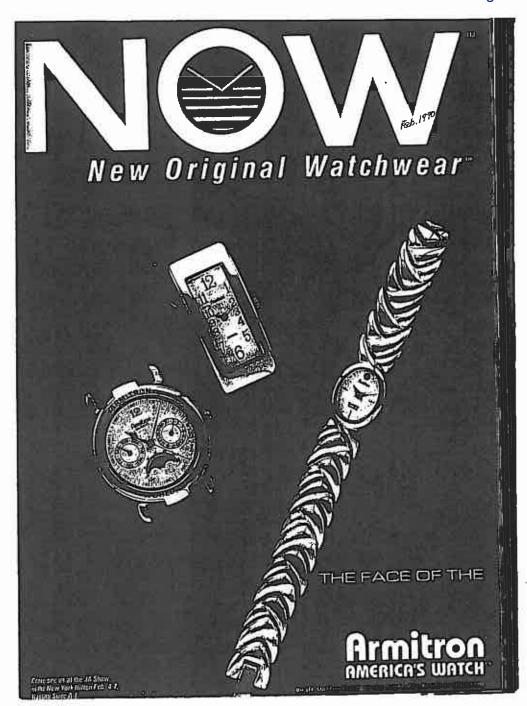
330 Feet (100 meters) Watches suitable for snorkeling, surfing and water skiing

600 Feet (Approximately 200 meters) Watches suitable for recreational scuba diving



Armitron.

**EXHIBIT B** 





Document 13-3

Filed 06/06/2008

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**CELEBRITY HEALTH AND FITNESS AWARDS OF 1999** The New

Feel-Full Weight Loss Trick, pq. 92

12-PAGE PULLOUT BONUS!

NESS, BEAUTY & HEALTH

All the insider advice you need for Y2K—from shapeup moves to makeup musts

The #1 Total-Body Workout

SELF unveils your best at-home get-fit plan

STEAL THESE STRATEGIES

Stay-Slim Secrets of Women Who Eat What They Want

10 MORTIFYING QUESTIONS YOU'D REALLY RATHEP NOT ASK YOUR DO (We did it for your

**Exclusive Interview** 

HILLARY CLINTON SANE AND BOUNCE



DECEMBER 1999 \$2,79 CANADA/FOREIGN \$3,95

QUICK—WHAT'S YOUR HEALTH DESTINY? Find out if your future's a done deal

GET IT NOW 53 Best

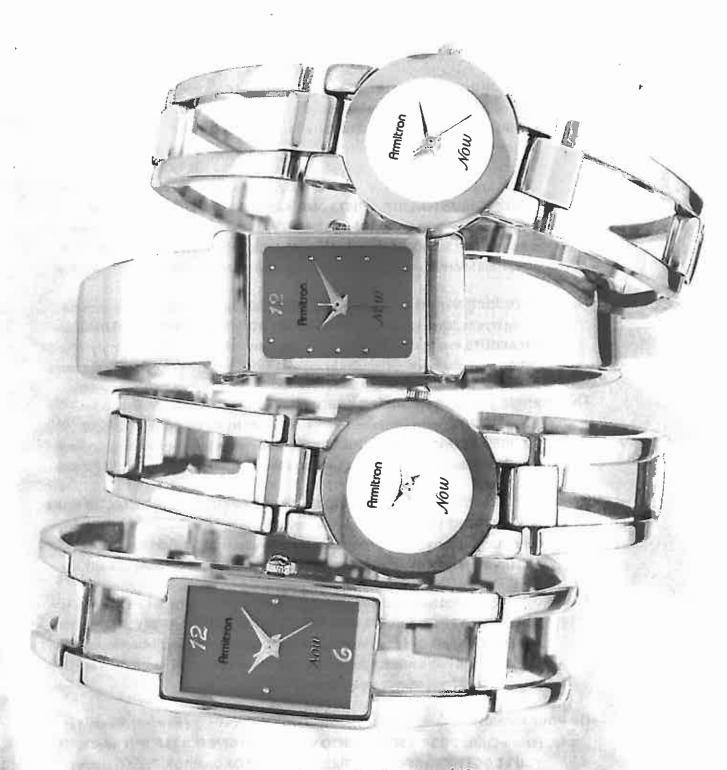
Beauty Buys by Máil

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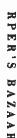
**DECEMBER 1999** 

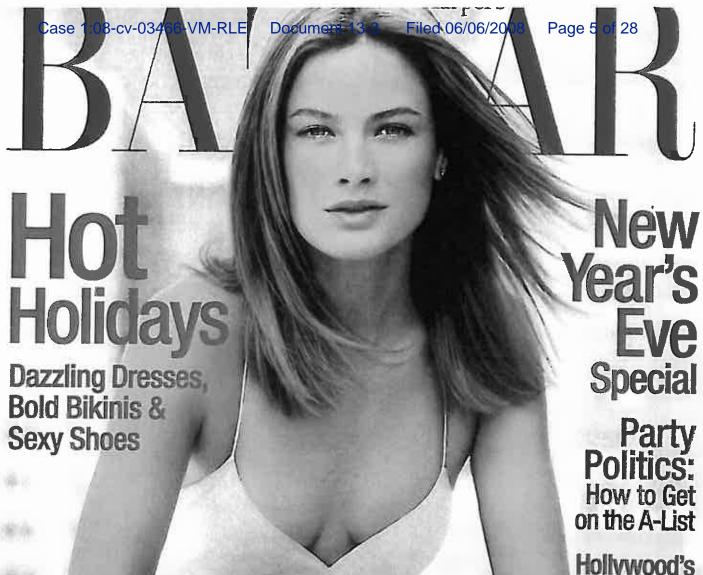
Fitness, Beauty & Health Mega-Manual = Stay-Slim Secrets





The Now Collection from \$40 FOR THE NEAREST ARMITRON RETAILER CALL 800-840-2933 EXT.\$E





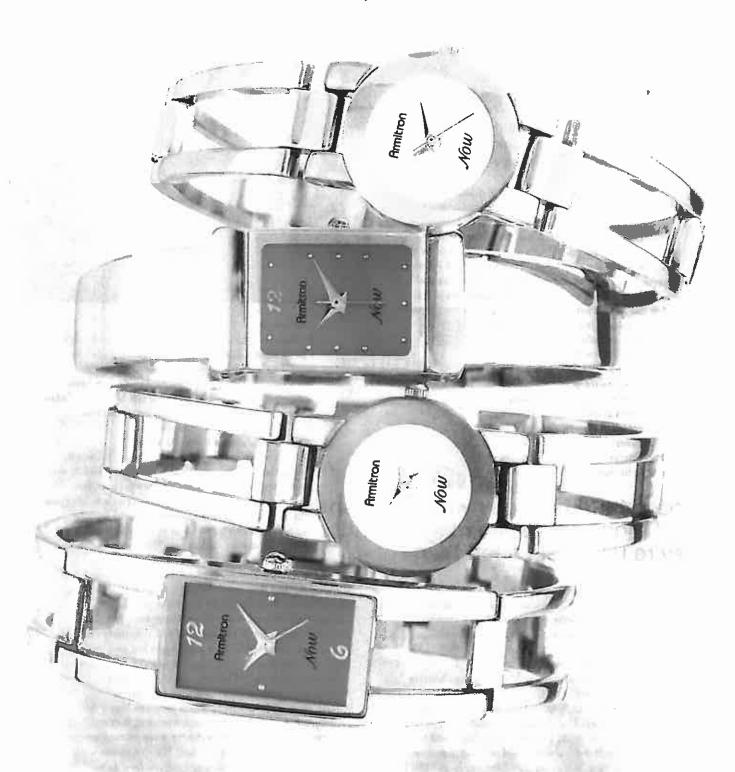
The It Girls From Da Brat to Diane Sawyer

Eve Special

Hollywood's **Hippest** Hangout

24-Hour Beauty: Manicures at Midnight



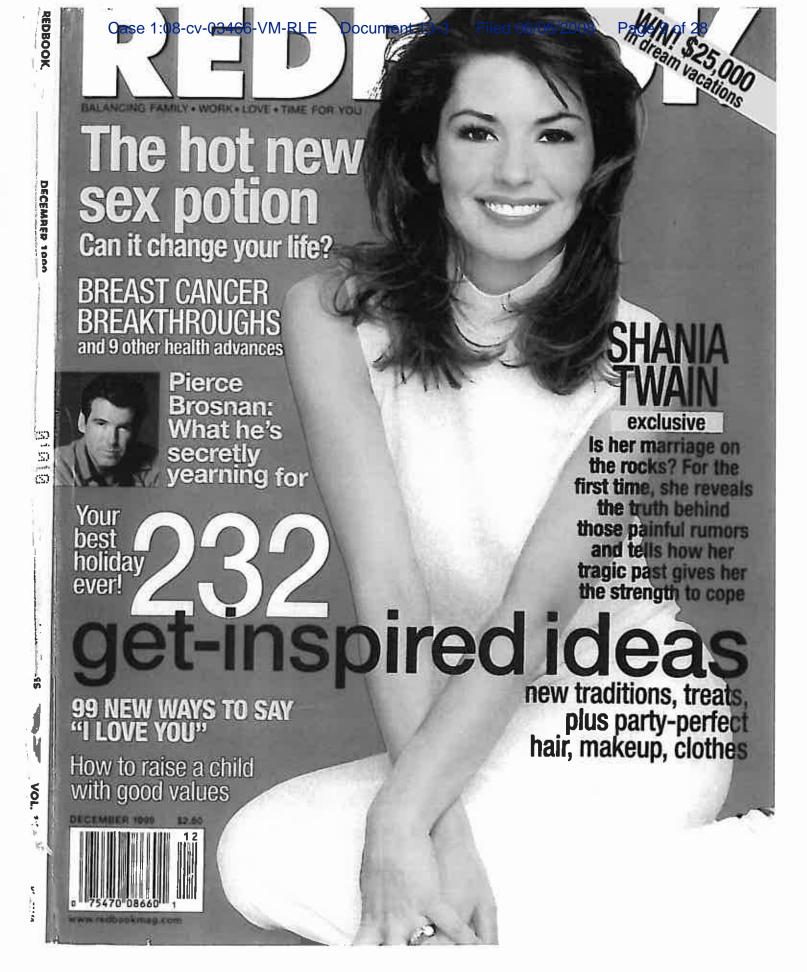


The Now Collection from \$40 FOR THE NEAREST ARMITRON RETAILER CALL 800-840-2933 EXT.HB





The Now Collection from \$40 FOR THE CLOSEST ARMITRON RETAILER CALL 800-840-2933 EXT.E



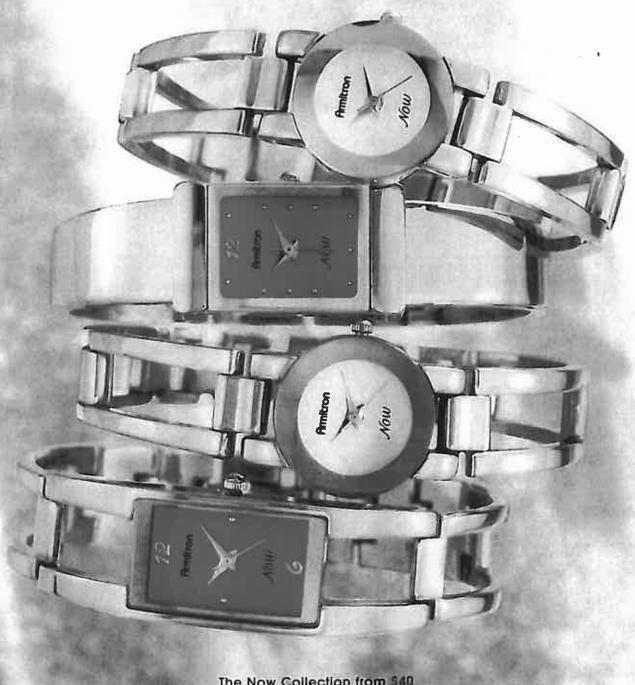




The Now Collection from \$40
FOR THE CLOSEST ARMITRON RETAILER CALL
800-840-2933 EXT.R



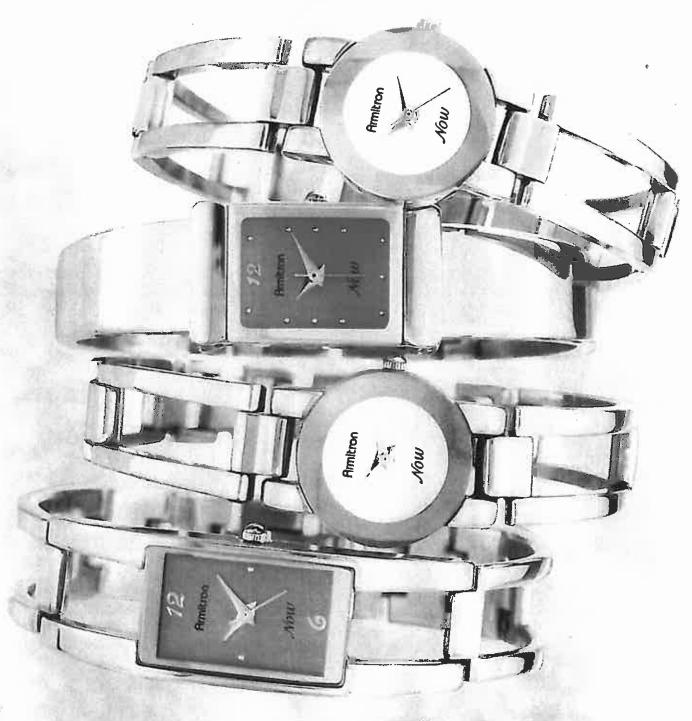




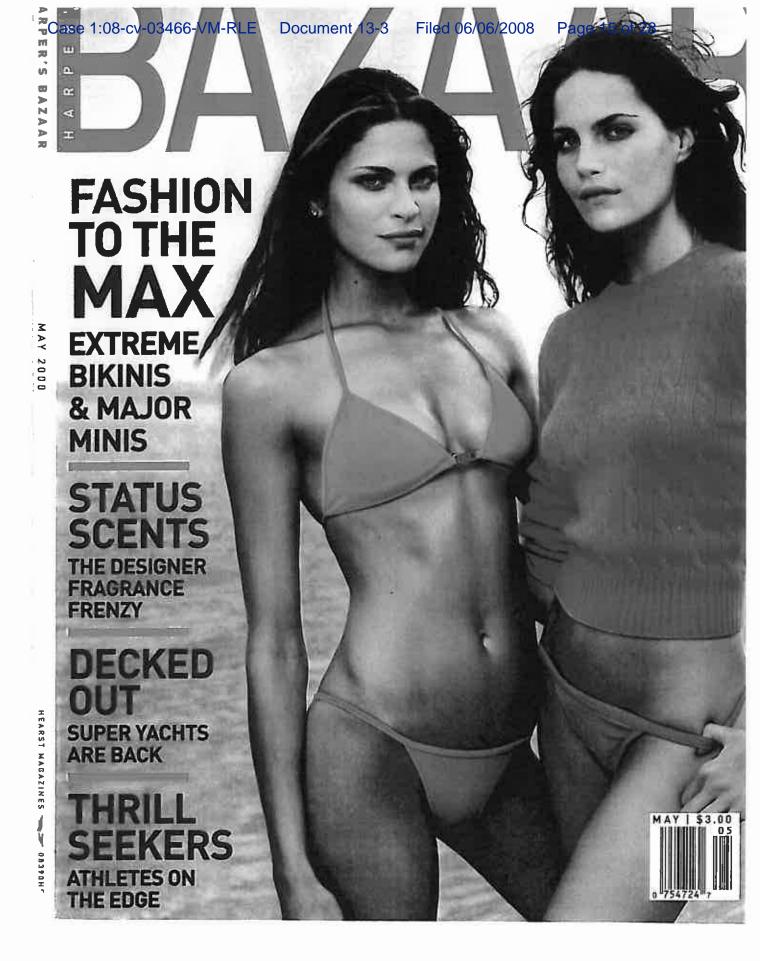
The Now Collection from \$40
FOR THE CLOSEST ARMITRON RETAILER CALL
800-840-2933 EXT.J

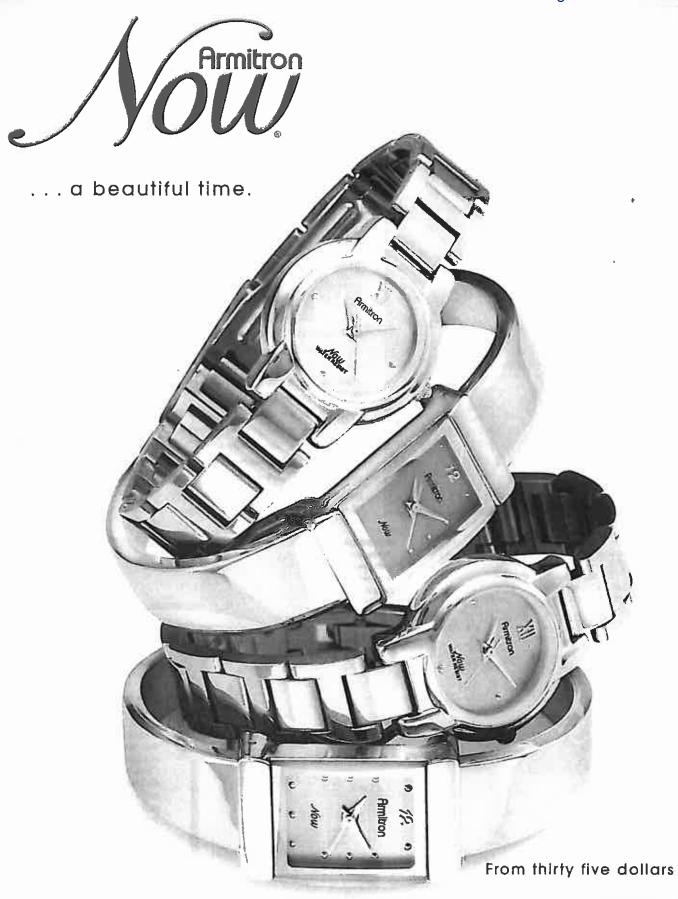




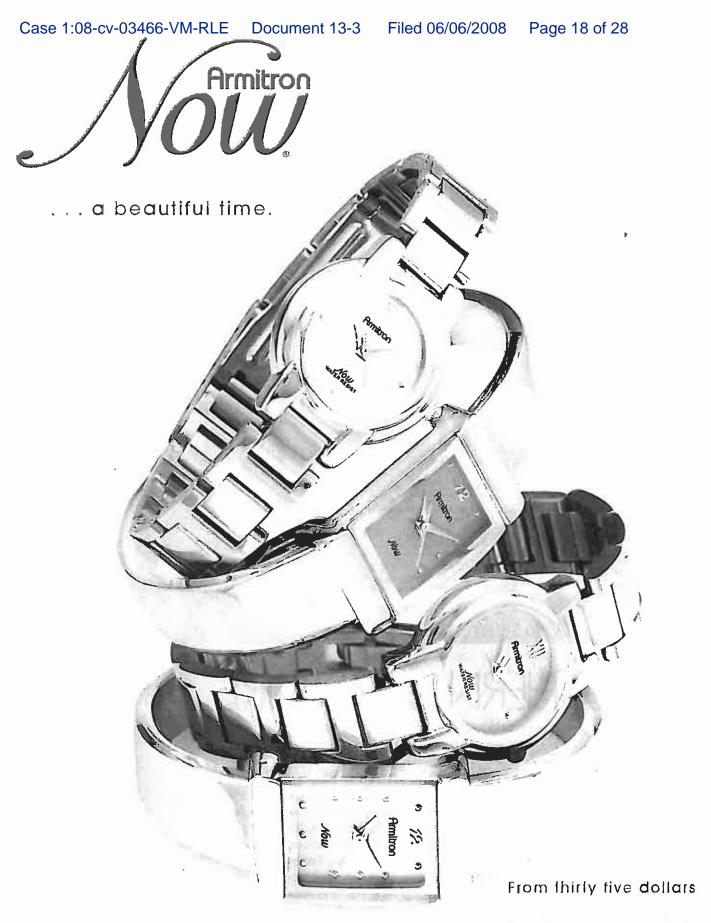


The Now Collection from \$40
FOR THE CLOSEST ARMITRON RETAILER CALL
800-840-2933 EXT.IS

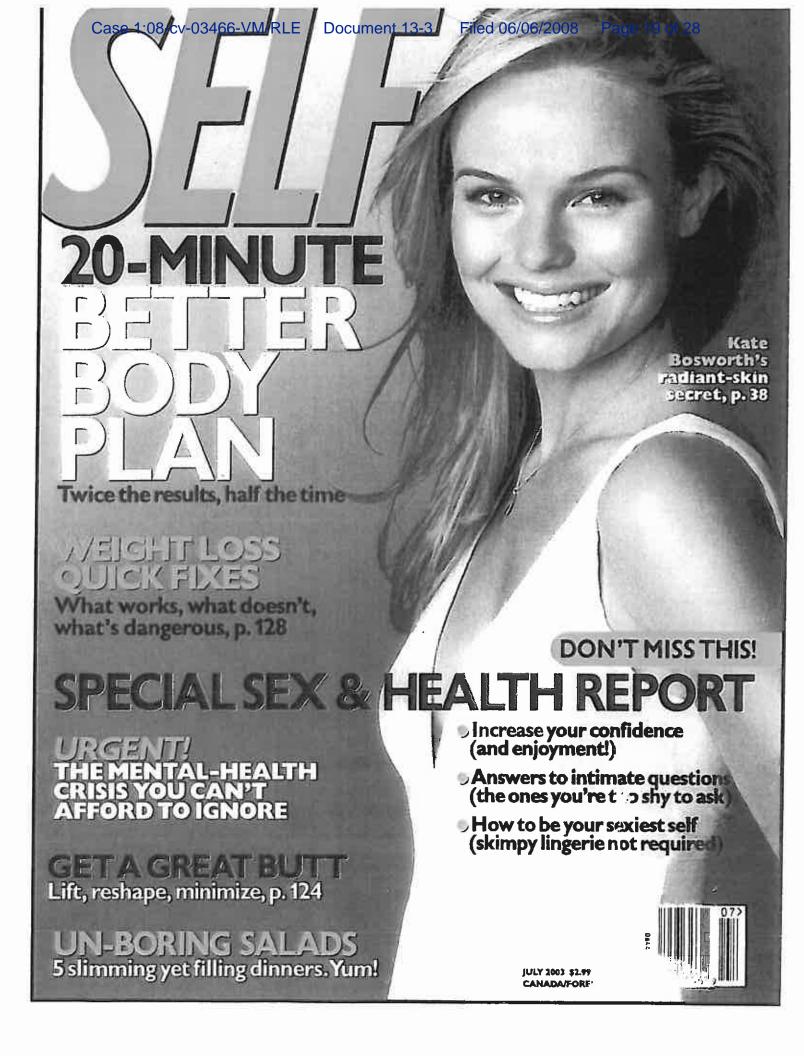




For the Armitron retailer nearest you, call: 800-840-2933 ext.H



For the Armitron retailer nearest you, call: 800-840-2933 ext.E



HERE'S NO NEED TO LET A SUDDEN crisis stop you from scoring your dream job. Try these fast, foolproof fixes and you'll increase your chances of snagging an offer, no matter what trips you up. INTERVIEW SNAFU You spilled on yourself If your morning joe has left its mark, go to the grocery, buy some white vinegar, then gently dab it on the stain to remove. Or say to your interviewer: "I thought about canceling, but then I realized this meeting isn't about my shirt; it's about what I can bring to the company," advises Carole Martin of www.interviewconeh.com.

INTERVIEW SNAFU You have onion breath If there are no mints handy, use the curved end of a plastic spoon to scrape stinky-breath bacteria off your tongue. Then sip water: Dry mouth can exacerbate the odor problem.

INTERVIEW SNAFU You're sick If you can't rebook, keep your germs to yourself. Say, "Pardon me for not shaking

hands. I have a cold," Martin suggests. Also, bring lozenges and water, because cold remedies can sap saliva and cause the aforementioned bad-breath problem. Then don't bring up your health ngain. Powering through the meeting without complaint shows you're determined to make the position yours. INTERVIEW SNAFU You're late Five minutes behind? Don't worry, Many managers will assume the receptionist kept you waiting. If you'll be any later, call, apologize and say, "I know your time is valuable. Would you like to reschedule?" Don't elaborate unless the reason for your tardiness is a true emergency (i.e., family crisis, not traffic jam). —Kimberly Flynn

Win a watch
Be on time!
Land one of eight
free watches
from Armitron's
Now Collection,
worth \$45. (We love its
classic look.) See page

157 for entry how-tos.

ann). —Kimveny riyun

SELF FREEBIE!

Win a watch

Be on time!
Land one of eight
free watches
from Armitron's
Now Collection,

worth \$45. (We love its classic look.) See page 157 for entry how-tos.

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a hanky and, we hope, a solution. —Holly Cassandra Corbett

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Once vows are exchanged, you're both legally liable.

E-mail Rowley your finance questions at money is self.com.

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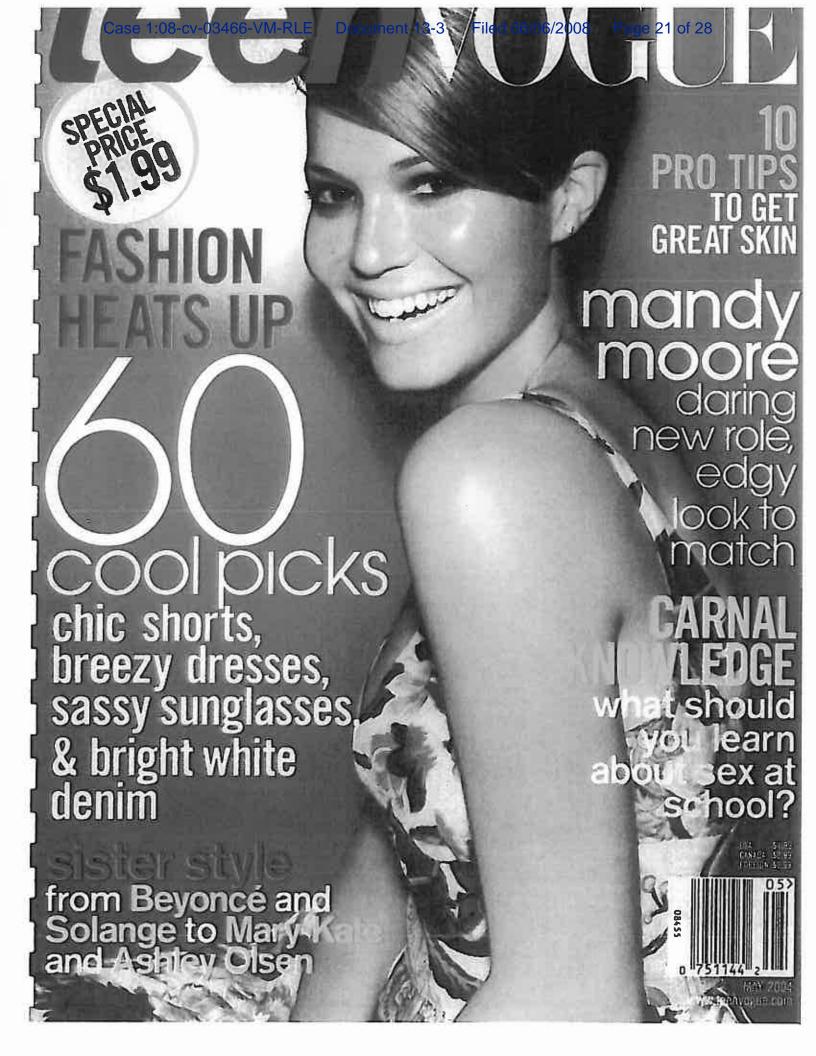
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Even

Don't let a

spil curb your

confidence.





Palladium canvas sneaker, about \$65. (888) 368-7996.



Claus Porto Violet Bath Foam, \$35. www.lafcony.com.



Ayah New York metallic leather clutch, about \$160. Barneys New York, NYC.



Vivienne Tam tiered chiffon dress, about \$325. Vivienne Tam, NYC.



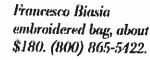
and grape-colored high-tops.



Now by Armitron watch, about \$35. (800) 840-2933.



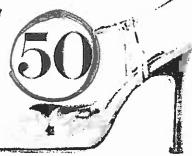
Wendy **Mink** plastic earrings, about \$118, Henri Bendel, NYC.



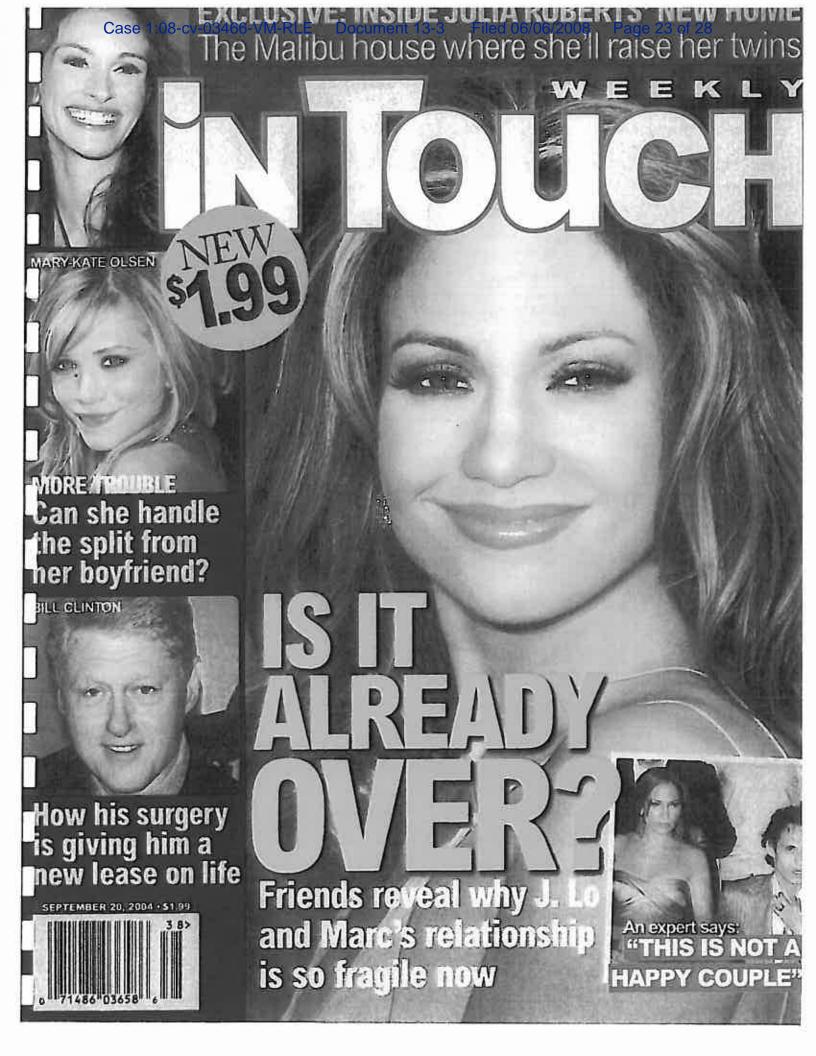


kirsten dunst

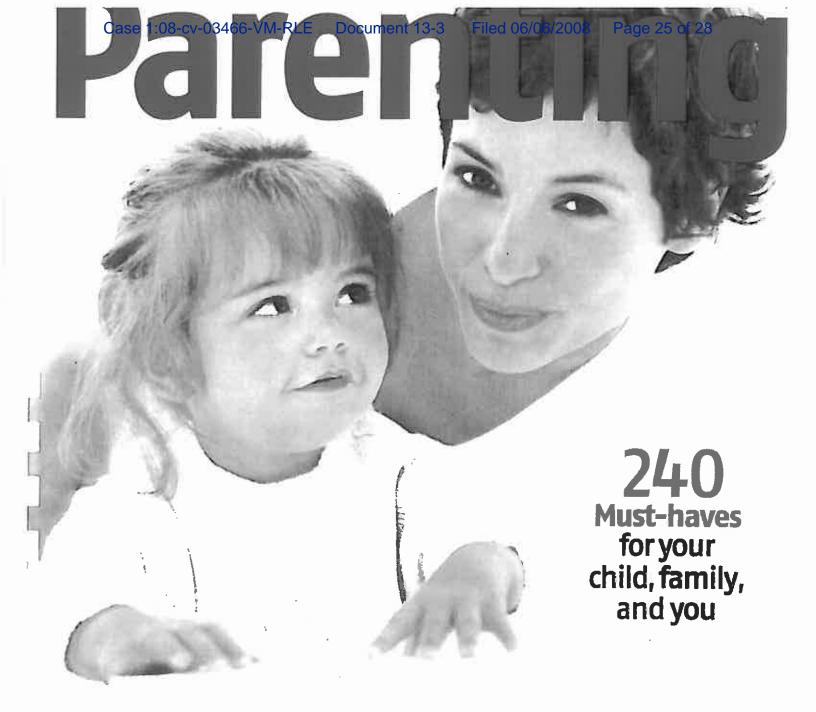
Maybelline New York Forever Metallics lip color in Silver Lilac, \$0. Drugstores.



XOXO Footwear satin heel, about \$76. (866) 969-6444.







# Our Special Shopping Guide!

best buys, great solutions

Tame the clutter - Keep kids safe - Simplify mealtime Ease bedtime - Enjoy mom time!

Parenting Mom-Tested!



n

### time it You live by the clock. Why not have a watch that reflects your life?



-ELAINE MEHLER MOM OF TWINS GABRIEL AND JESSICA, 4 ENGLEWOOD, NJ

and it's practically

weightless!"

4. Trendy mom You didn't feave your sense of style at the door of the delivery room, so make a fashlon statement with this unique stainless-steel square face (and huge numbers!) and wraparound strap. (By DKNY, \$85; 800-449-3056)

day to hot mama by night,

\$40; 800-840-2933)

(Now Collection by Armitron,

"It felt stylish on my wrist, and the face was big enough to read easily. Plus, I got lots of compliments from my friends."

> - MARY ELLEN O'BRIEN MOM OF J.J., 10, AND BARBARA, 9, DELAFIELD, WI

> > 5. Toddler mom A tough, classic stainless-steel band makes this an obvious choice for the mom with the kid who just won't quit. (The LaHoya by Tommy Hilfiger, \$75; 888-T0MMY-4-U)

Photograph by Kenro Izu

october 2004 Parenting 183

#### THE PRETTIEST PARTY MAKEUP

# Glam details:

Our exquisite 11-page jewelry guide

How to get an insta feminin

### LUCKY BREAKS

PAGE 247

NOVEMBER 2004

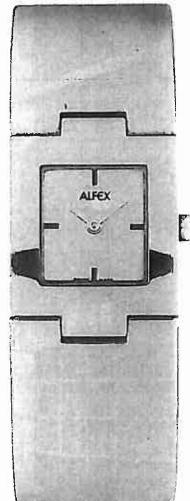
#### INSIDER STYLE WHAT FASHIONS REALLY

# everyday SEXY

- shapes made to perfect your body
  - hot pieces everyone will notice
  - work dressing like you've never seen it

Alicia Silverstone shops organic

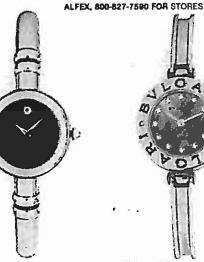




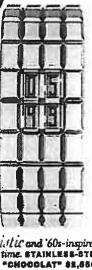
This sharp cufflike design is impressive in its boldness pair it with a clean-cul suit. STAIMLESS-STEEL CUFF, \$350

/! /nnciful opalescent face, offset by strikingly bright metal. STEEL "BZERO1" WITH

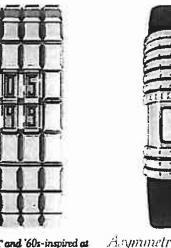
MOTHER-OF-PEARL FACE, \$1,500 BULGARI, 800-285-4274



Simplicity at its best-streamlined and timeless. STAINLESS-STEEL "BARELETO" SBOS MOVADO. SELECT MACY'S, 600-343-0121



Futuristic and 60s-inspired at the same time. STAINLESS-STEEL DIGITAL "CHOCOLAT" \$2,650 CHANEL, 800-650-0005 FOR LOCATIONS



Asymmetrical perfection with plenty of gleam and polish.
\*DEGLARATION\* \$4,780 CARTIER. 800-227-8437



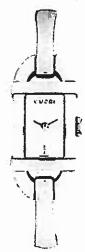
A shot of hot pink makes it a bit funky swarovski "now" collection, \$55 ARMITRON, 800-840-2933 **FOR STORES** 



Cluminal to user with jeens—or a floor-length gown.
CRYSTAL-DETAIL STAINLESS
STEEL, \$188 BULOVA.
SELECT MACY'S, 800-343-0121



The jeweled bracelet packs a lot of style punch. DIAMOND AND PINK TOPAZ "DEBUTANTE" WITH INTER-CHANGEABLE BANDS, \$4,400 COREM. BAILEY BANKS & BIDDLE, 800-651-4222



A GICAL option for the office—it's modern, uncluttered, and entirely professional.

ETAINLESS ETEEL, \$605 GUCCI, 212-826-2800

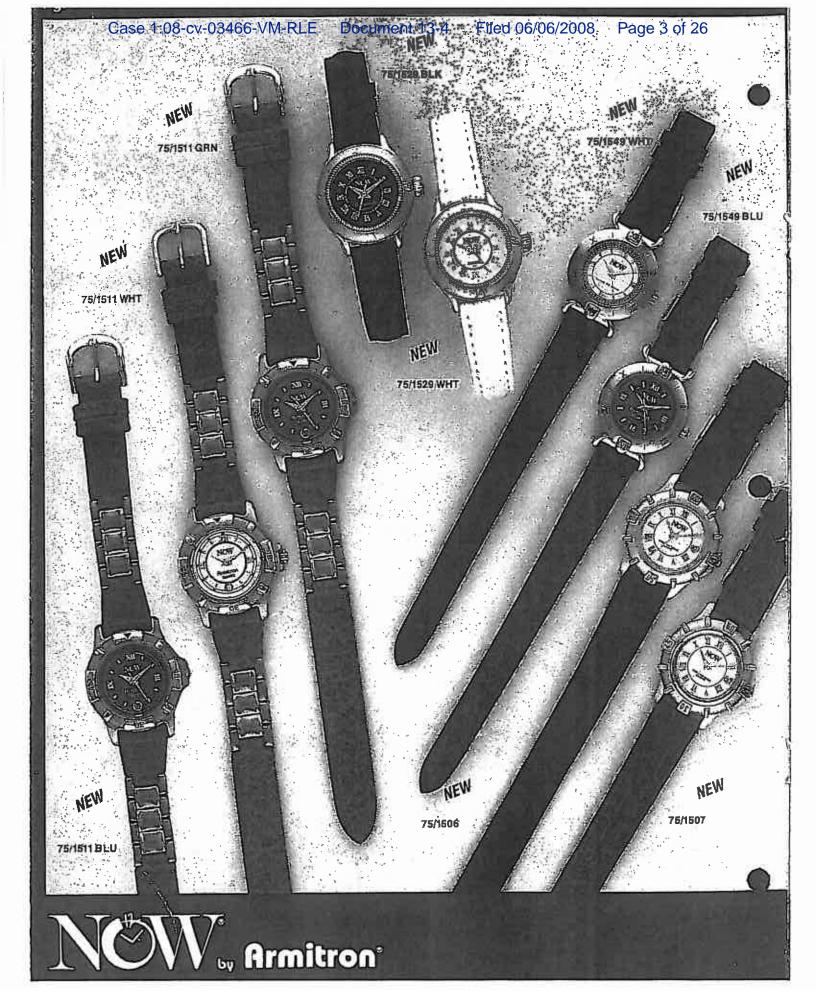
**EXHIBIT C** 

Armitron

•

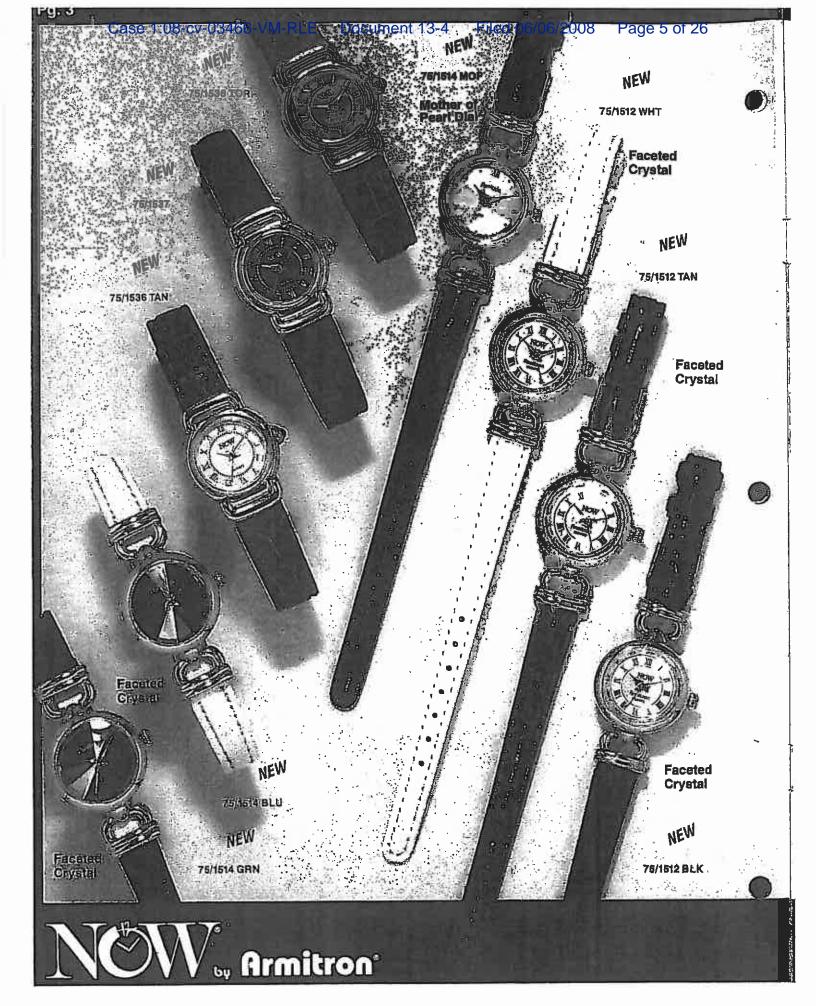
Armitron

FALL 1993



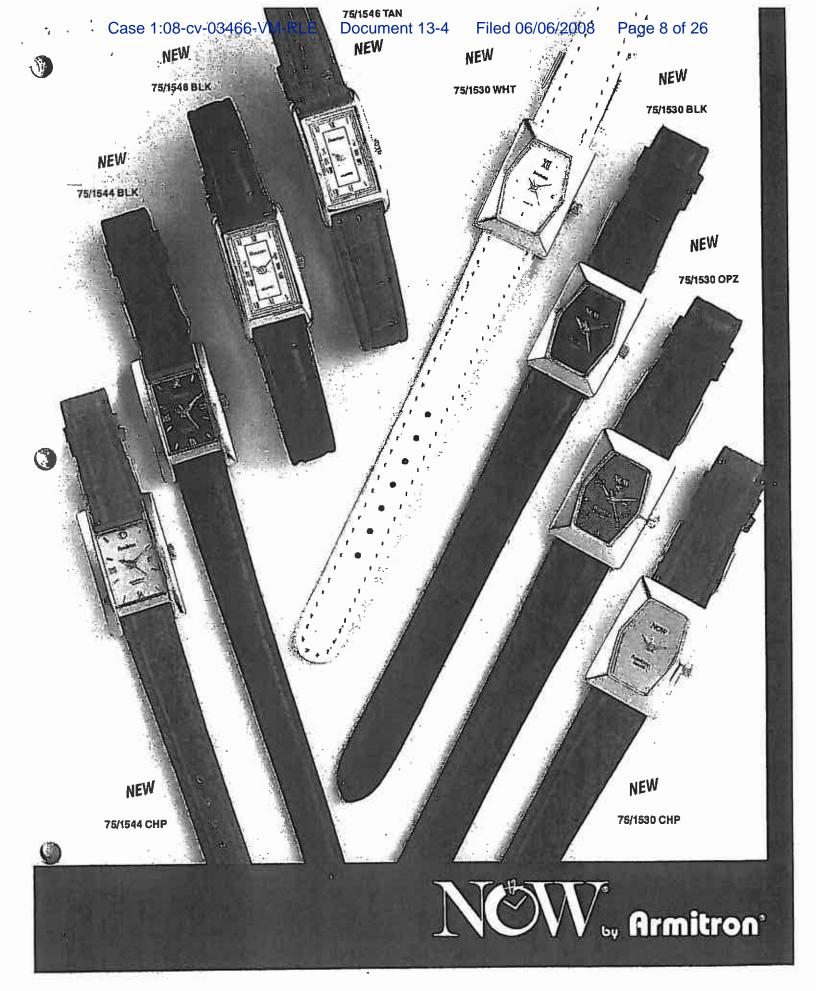


NOW Armitron

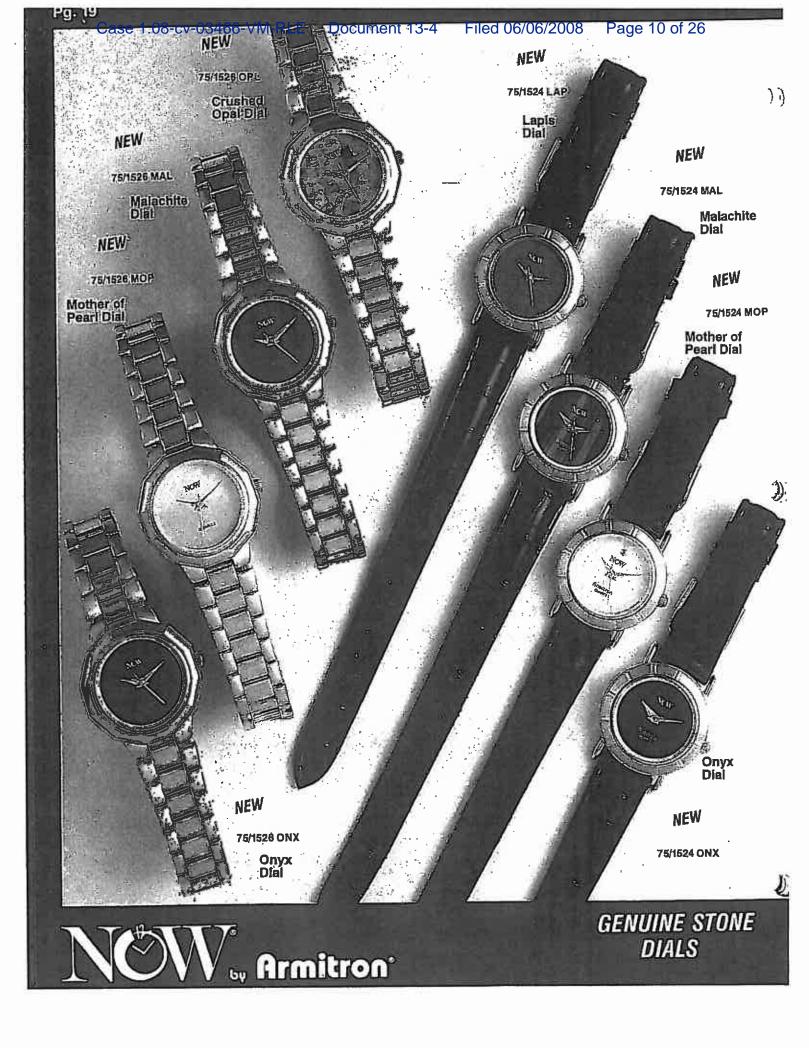


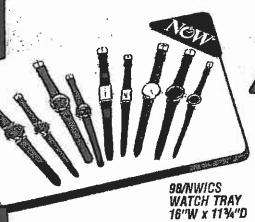


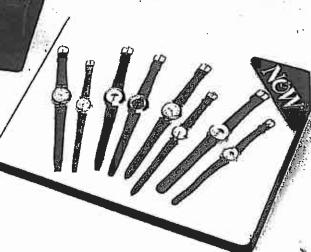
NOW Grmitron





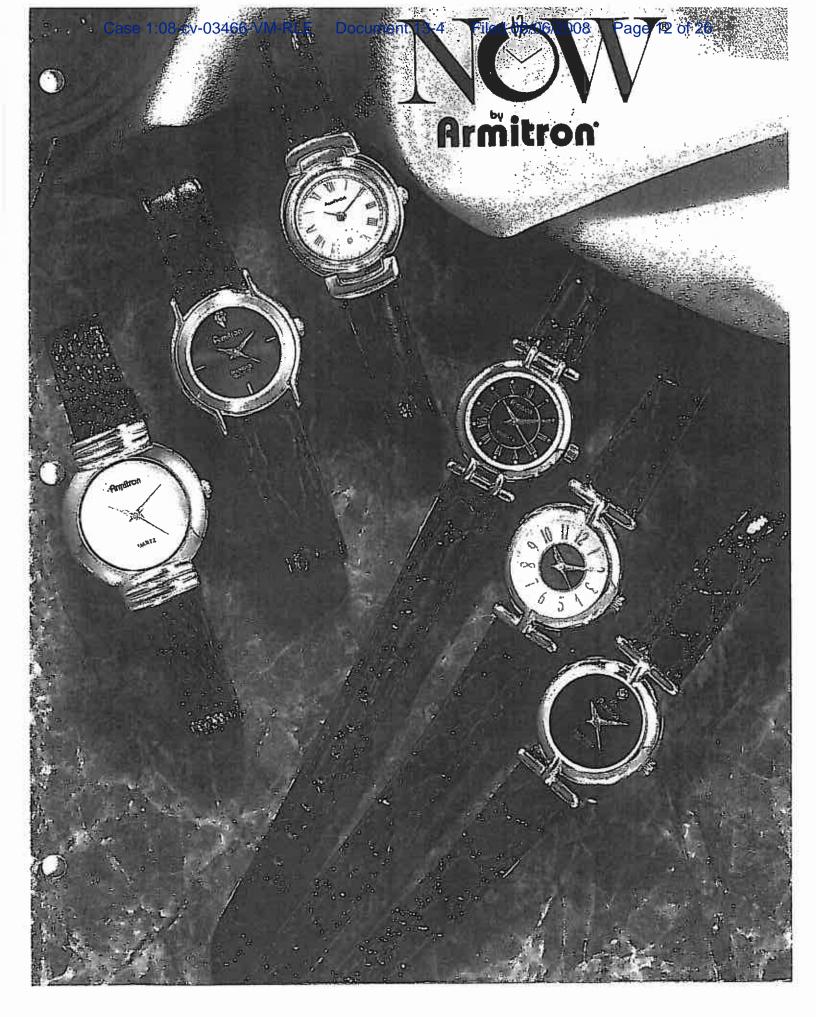


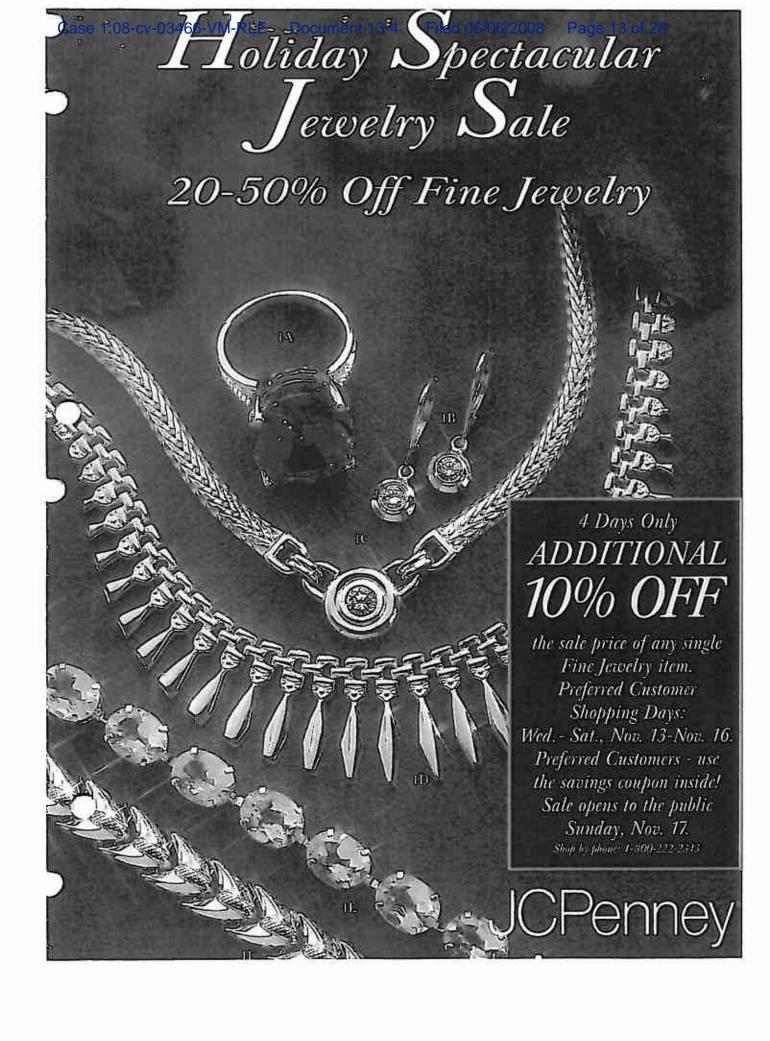




**EXCITING NEW FIXTURES** CREATE DYNAMIC IN STORE **PRESENTATIONS!** 

**Armitron**° POINT OF PURCHASE





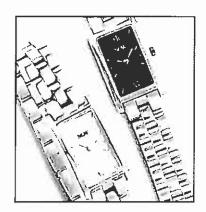
### Case 2:00 00 OFF FASHION WATCHES



Also in-store:



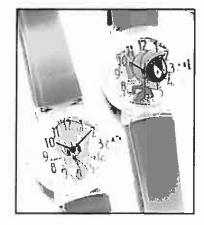
#### E N S



SILVER BRACELETS	PAGE 2
MESH BRACELETS	PAGE 3
ANTIQUE	PAGE 4
BANGLES	PAGE 5
REVERSIBLES, GOLD BRACELETS, PENDANT	PAGE 6
EXPANSIONS	PAGE 7
TWO-TONE BRACELETS	PAGE B
BOXED SETS	PAGE 9
STRAPS	PAGE 10
FIXTURES	PÁGE 31, 32



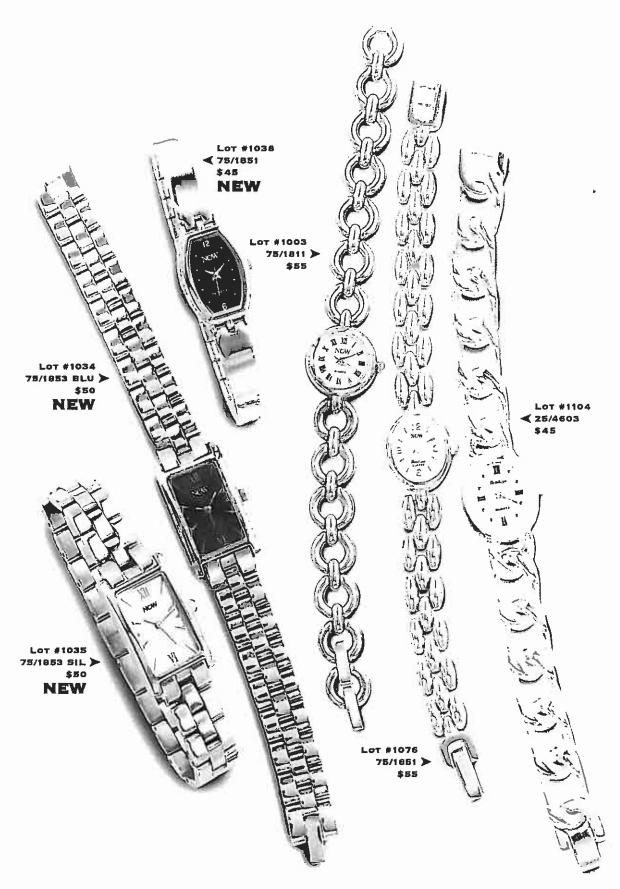
DURASTEEL	PAGE 12-14
COLOR DIALS	PAGE 16
MEN'S BRACELETS	PAGE 17
LADIES' BRACELETS	PAGE 18
EXPANSIONS	PAGE 19-21
POCKET WATCHES	PAGE 21
STRAPS	PAGE 22
INSTALITE	PAGE 23,25-28,30
ANA-DIGIS	PAGE 24
DIGITALS	PAGE 29
CLEAR STRAPS	PAGE 30
FIXTURES	PAGE 31.32



#### CHARACTER

CLASSIC COLLECTION	PAGE 34-36
MUSICALS	PAGE 36,41,42
ROTATING DISCS	PAGE 38
INSTALITE STRAPS, CLOISONNE	PAGE 39
SCULPTED DIALS	PAGE 40
BOXED SETS	PAGE 43
MINIS	PAGE 44
BRACELETS	PAGE 45
POCKET WATCHES	PAGE 46
JELLIES	PAGE 47-49
FIXTURES	PAGE 50-51

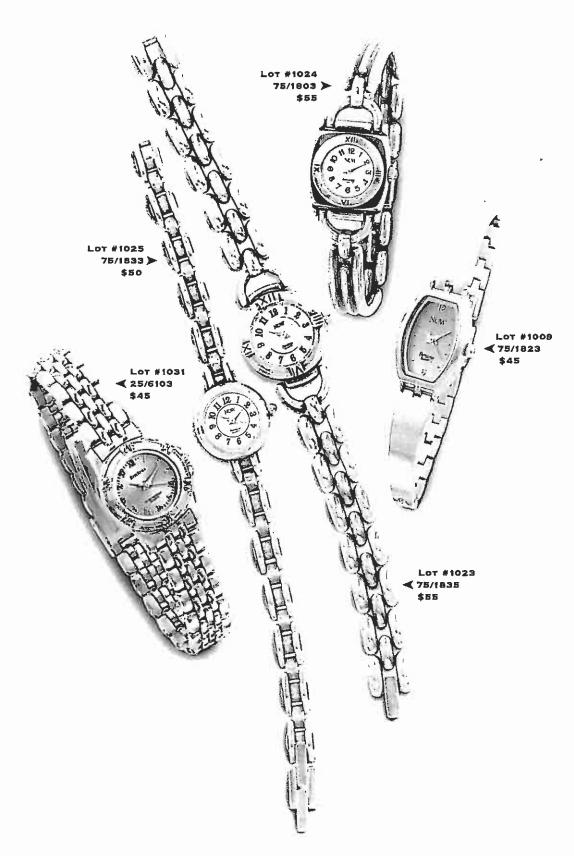
LIFETIME LIMITED WARRANTY













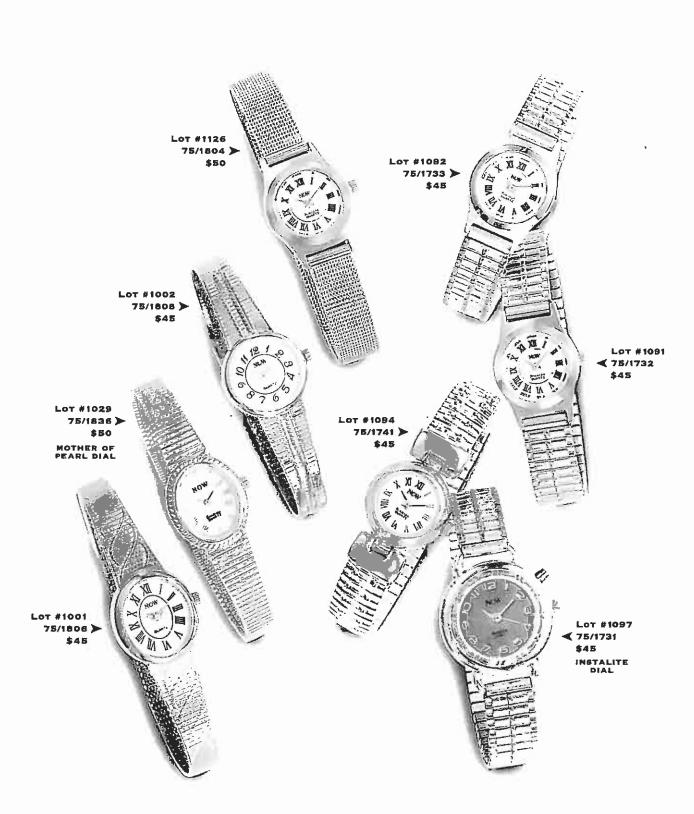




**1** 

ANGLE

Q



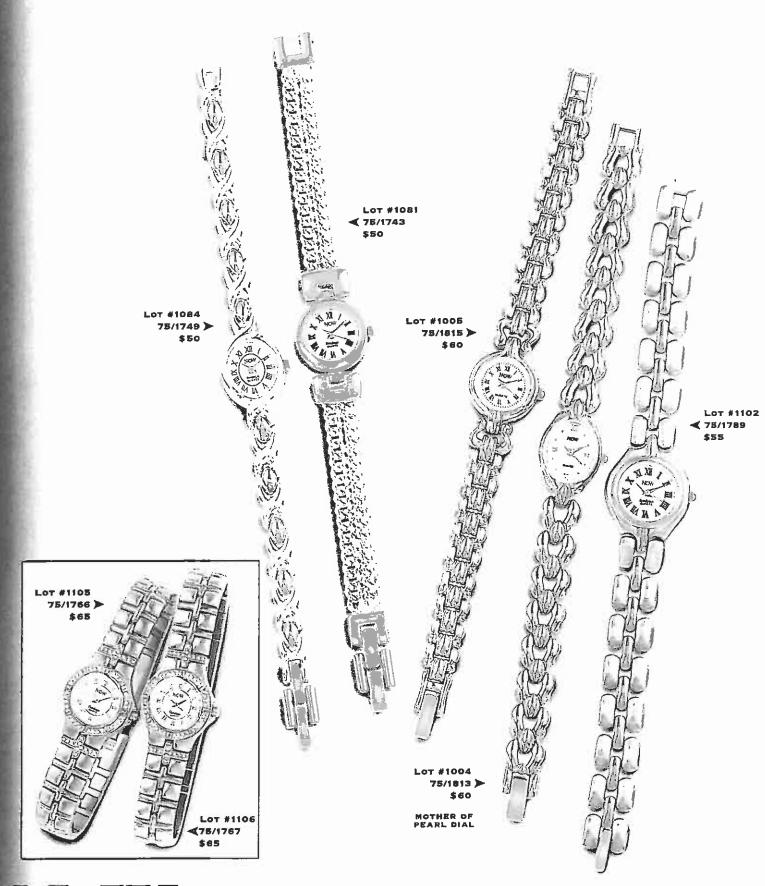


M

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PANSION

Q









BOXED

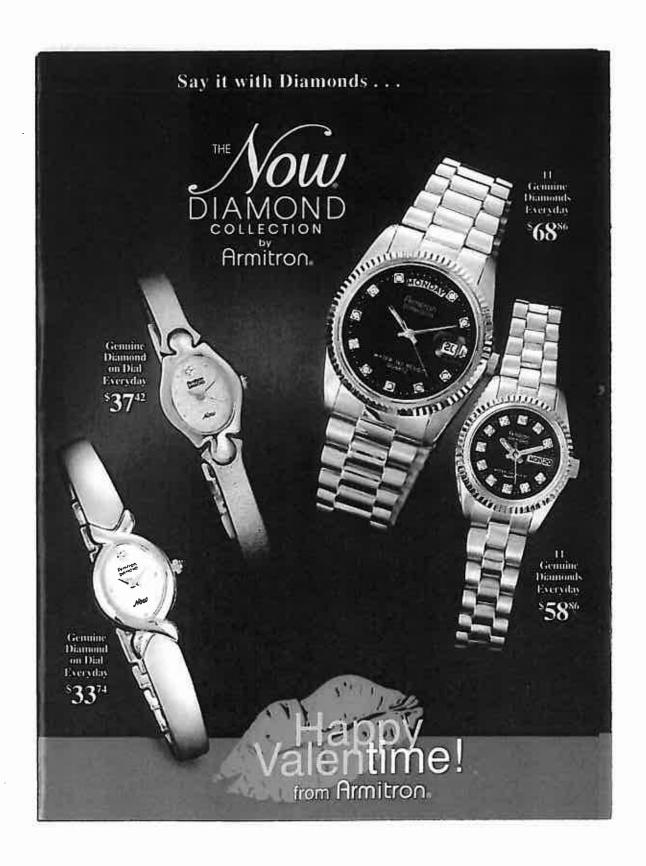
SETS





# America's Watch

Supplier number: 10461-2 SUB 050 it's all inside. **JCPenney** 





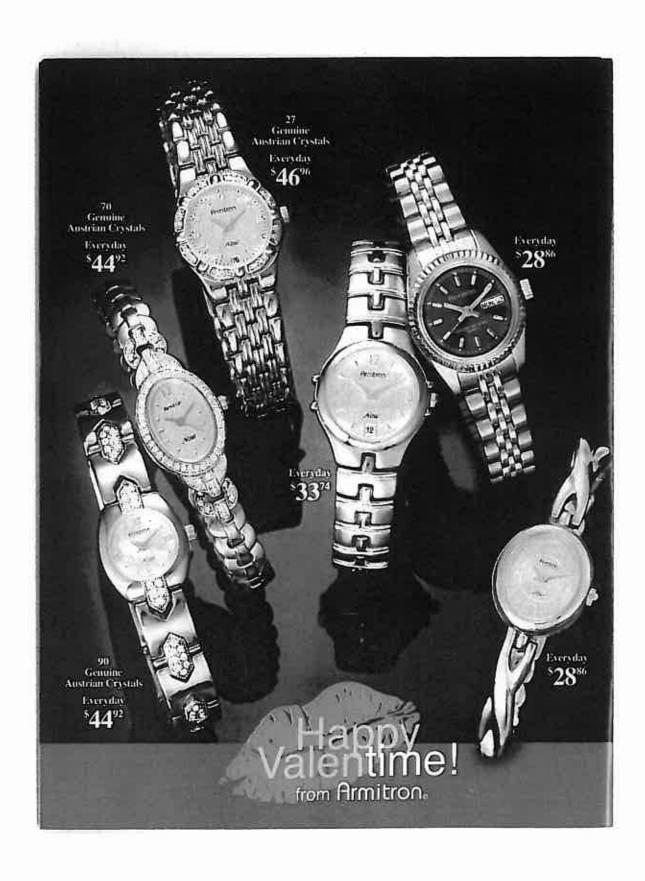
are found in every Armitron Watch. Simply stated . . .

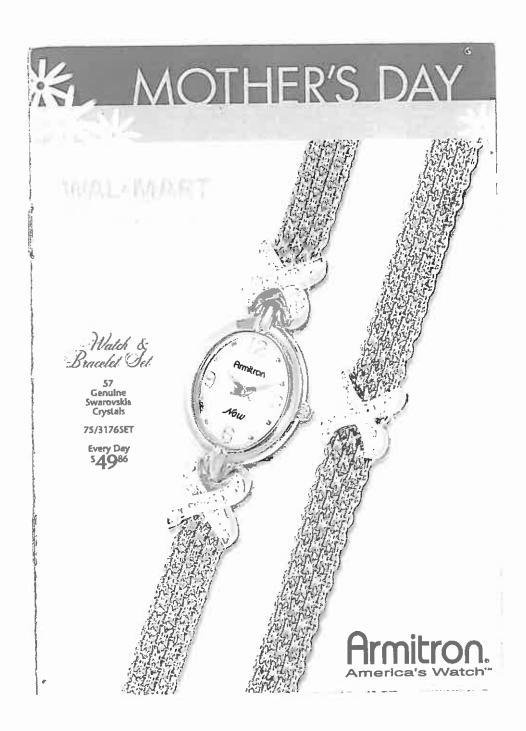
Armitron is the Best Priced Quality Watch in America.

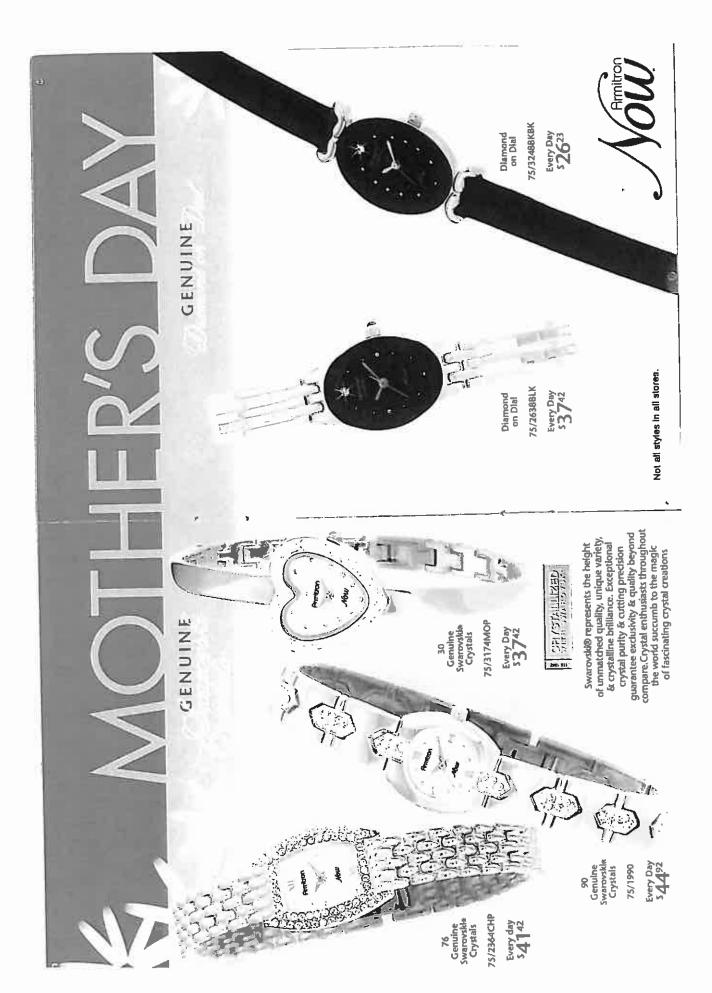






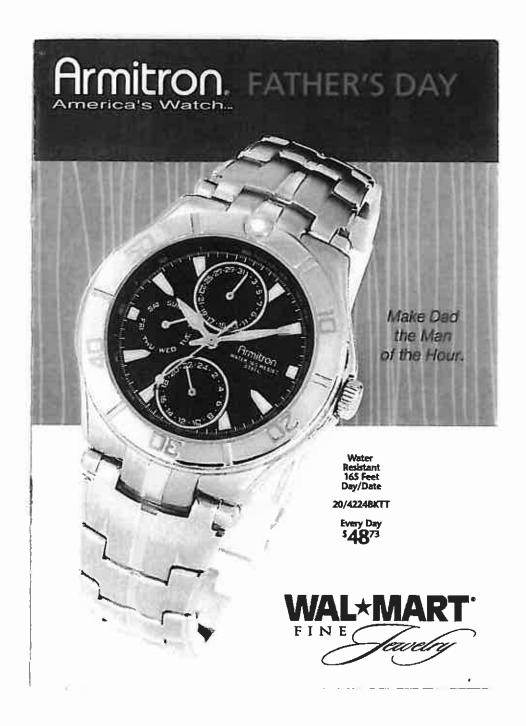


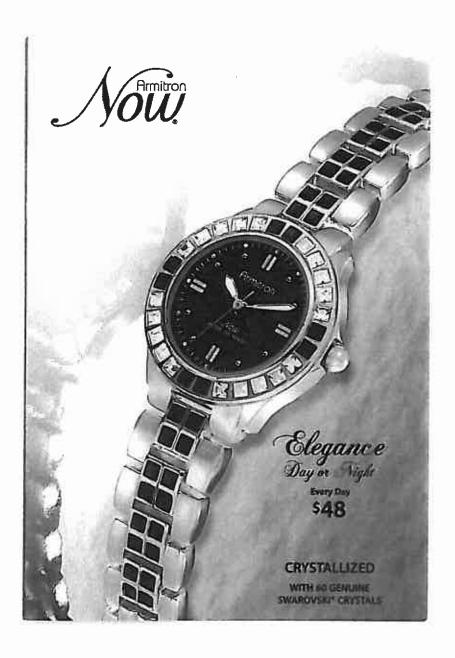


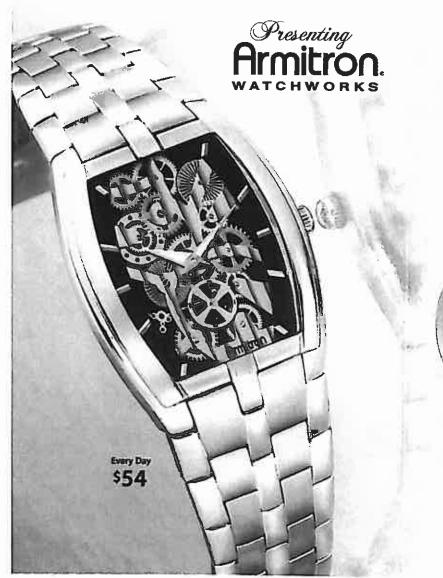








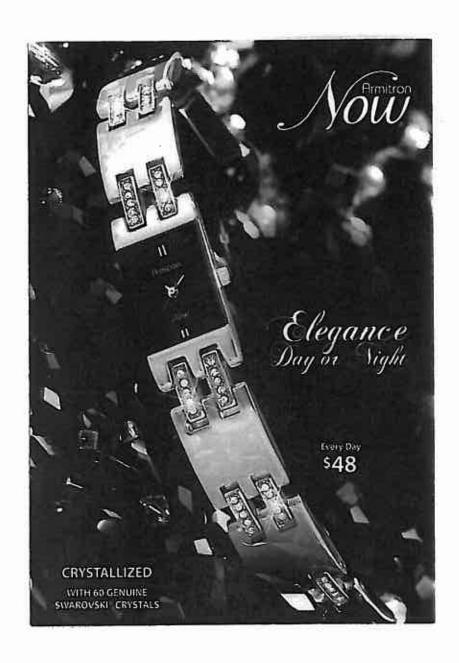


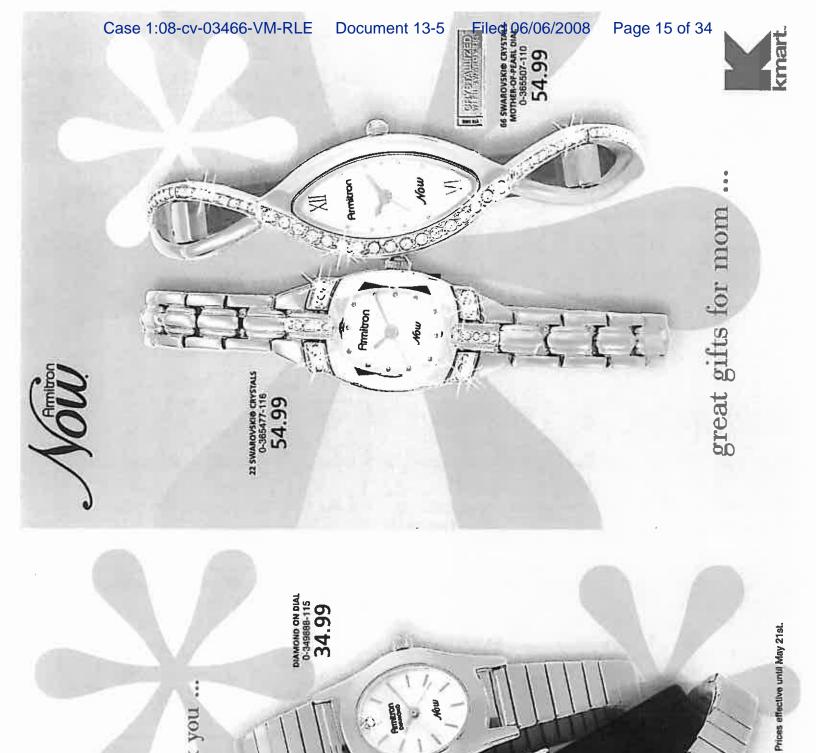


# Stainless Steel Case & Bracelet Water Resistant to 165 Feet



Form & Function









Armerica's Watch TESTITION TO I #42556 **54.99** Holiday Time #10192 64.99 MANUFON TO 2004 Armitron #10621 **59.99** DS A #10184 64.99

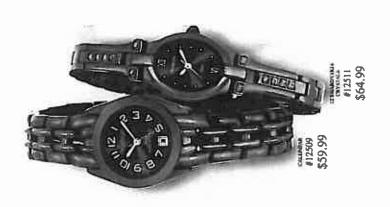
#41174 **39.99** #40904 29.99 #40984 #49.99 #10625 **49.99** 



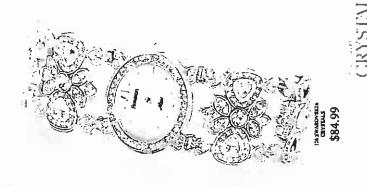


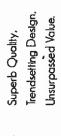




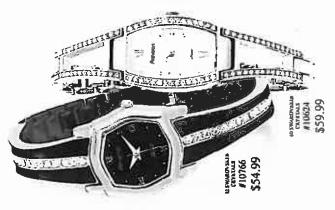


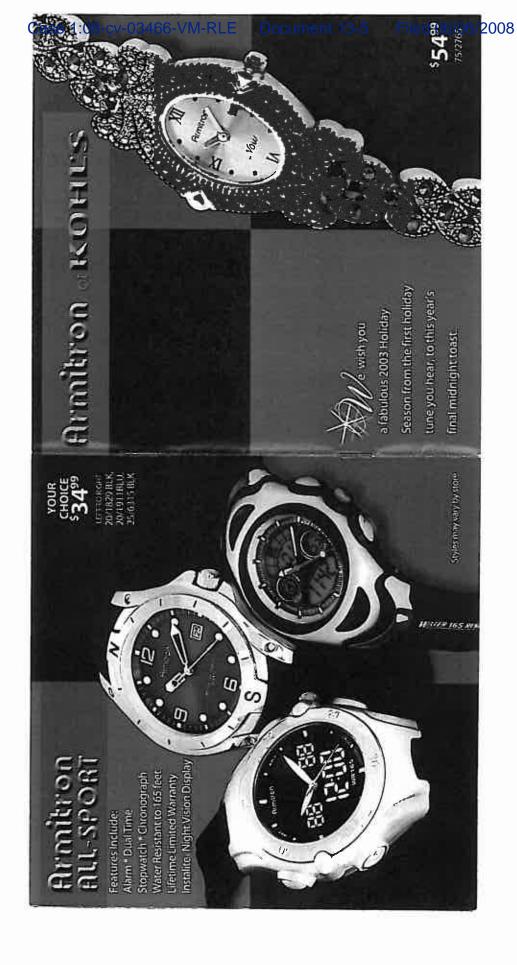


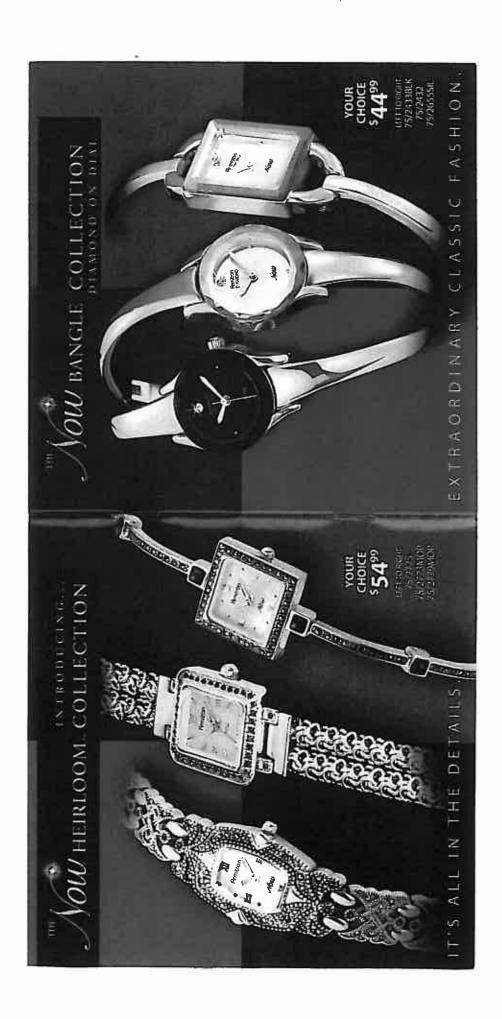






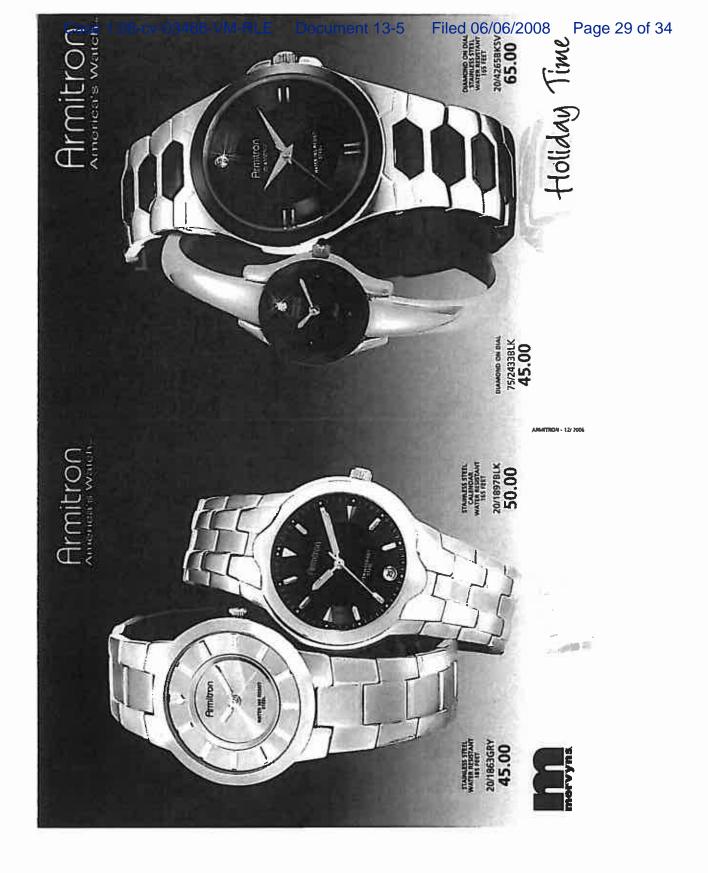






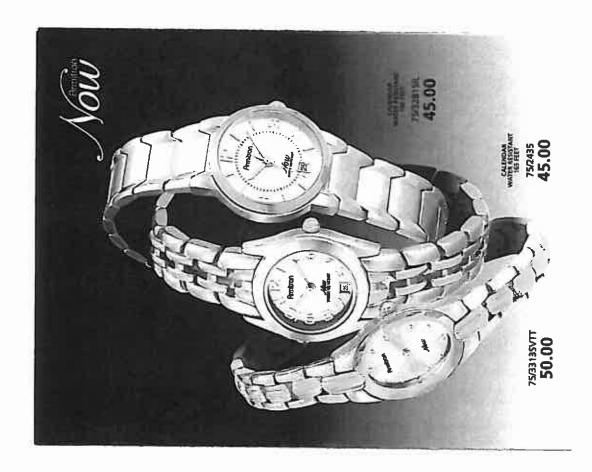






Page 30 of 34





Case 1:08 cv-03466 V/M PLE - Document 13.5 - Filed 06/06/2008 - Page 33 of 34



# **EXHIBIT D**

Int. Cl.: 14

Prior U.S. Cl.: 27

Reg. No. 1,446,294

United States Patent and Trademark Office

Registered July 7, 1987

# TRADEMARK PRINCIPAL REGISTER

## NOW

E. GLUCK CORPORATION (NEW YORK CORPORATION)

10-10 THOMSON AVENUE

FIRST USE 9-16-1986; IN COMMERCE 9-16-1986.

29-10 THOMSON AVENUE LONG ISLAND CITY, NY 11101

SER. NO. 628,672, FILED 11-5-1986.

FOR: WATCHES, IN CLASS 14 (U.S. CL. 27).

C. A. SIDOTI, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-05-27 16:59:23 ET

Serial Number: 73628672 Assignment Information Trademark Document Retrieval

Registration Number: 1446294

Mark (words only): NOW

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2007-07-17

Filing Date: 1986-11-05

Transformed into a National Application: No

Registration Date: 1987-07-07

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the

Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-07-17

# LAST APPLICANT(S)/OWNER(S) OF RECORD

#### 1. E. GLUCK CORPORATION

## Address:

E. GLUCK CORPORATION 29-10 THOMSON AVENUE LONG ISLAND CITY, NY 11101

United States

Legal Entity Type: Corporation

State or Country of Incorporation: New York

### GOODS AND/OR SERVICES

International Class: 014 Class Status: Active WATCHES Basis: 1(a)

First Use Date: 1986-09-16

First Use in Commerce Date: 1986-09-16

#### ADDITIONAL INFORMATION

(NOT AVAILABLE)

#### MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

#### PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-07-17 - First renewal 10 year

2007-07-17 - Section 8 (10-year) accepted/ Section 9 granted

2007-07-13 - Assigned To Paralegal

2007-06-18 - Combined Section 8 (10-year)/Section 9 filed

2007-06-18 - TEAS Section 8 & 9 Received

2006-10-20 - Case File In TICRS

1992-11-28 - Section 8 (6-year) accepted & Section 15 acknowledged

1992-09-04 - Section 8 (6-year) and Section 15 Filed

1987-07-07 - Registered - Principal Register

1987-04-14 - Published for opposition

1987-03-13 - Notice of publication

1987-02-03 - Approved for Pub - Principal Register (Initial exam)

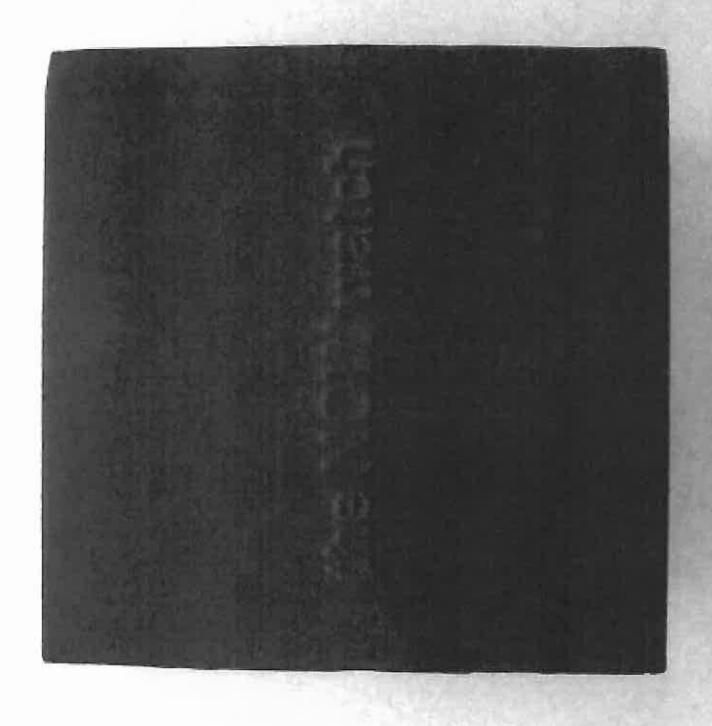
1987-02-03 - Assigned To Examiner

# ATTORNEY/CORRESPONDENT INFORMATION

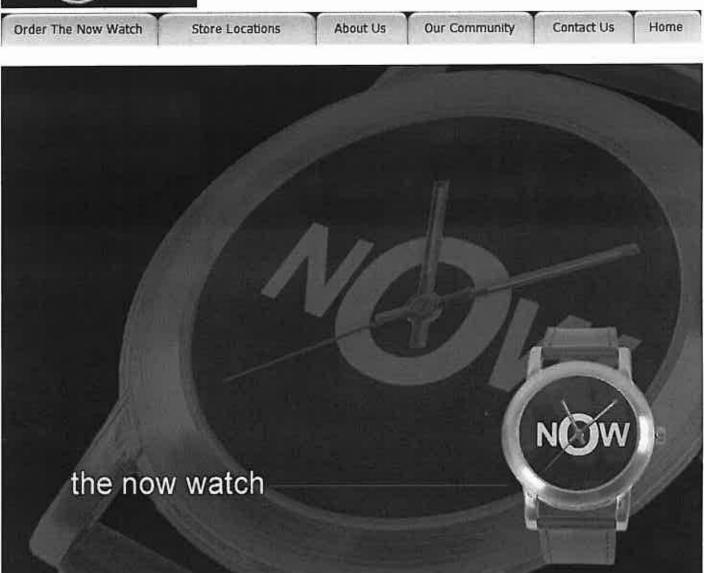
Attorney of Record JAMES REISMAN Correspondent
JAMES REISMAN
GOTTLIEB, RACKMAN & REISMAN, P.C.
8th Floor
270 Madison Avenue
New York NY 10016

Phone Number: 212-684-3900 Fax Number: 212-684-3999

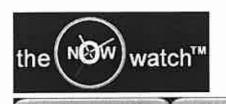
# **EXHIBIT E**



# **EXHIBIT F**



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### **Our Original Now Watch**

\$45.00 plus shipping & handling

### **Product Description:**

Our Original Now Watch brings our concept to life for men, women, and children. We've carefully designed our Original Now Watch to find a happy medium of style and practicality for all people and activities.

This watch features a black leather band and a silver colored case with a stainless steel back. It is the first of a line of Now Watches that will exhibit a wide variety of face designs, band styles, colors, and price points to fit our customers' more specific wants and needs. Please contact us with any suggestions.

### Please Click Below to Begin Ordering Your Original Now Watch!



Note: For corporate gifts or other bulk orders designed to focus a large group of people on the present moment... please contact us at info@thenowwatch.com to initiate special arrangements.

Return Policy: If for any reason you are not completely satisfied with your purchase you may return your Now Walch within 21 days of your order and receive a full refund (less shipping and handling) credited to your credit card within one business day of when we regain possession of what you return to us. In this circumstance, please contact us to assure personal attention to your return.

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Our Philosophy | Founder's Story | What's In Development?

## Our Philosophy

The Now Watch mission is to bring more presence to people's lives.

It's a simple goal but in a world where we are so busy and caught up trying to get things done, we rarely pause and take a moment to just be where we are right here and now. However, when we do appreciate the moment, we often feel a relaxing sensation, followed by an ability to focus and actually get more done in less time. In a sense, that's because it's always now. And when connected to the present moment, we are able to use our time to its fullest potential.

We've decided that a watch or a clock with the word NOW appearing prominently on the face is the perfect stimulus to help us access more presence in our lives. It works so easily... when we check our NOW watches and clocks, we'll find out the time of day as usual but will also be reminded that it is the present moment initiating a collision of the mystical with the utterly practical. Many people find it inspiring, some soothing, still others motivating, while others just laugh... but that's what make our timepieces what we consider to be functional pop-art left wide open to interpretation.

We believe we've hit on a radically simple concept that delivers a message in a fun, cool, and affordable way. Since the present moment is fundamental to every human, in every walk of life, our long term vision is to spread our products all around the world. Here are some sample translations into other languages:

Spanish - Ahora, Dutch - Nu, German - Jetzt, Greek - τώρα, Italian - Ora Portuguese - Agora, Russian - Τεπερь, Chinese - 🛄 🌠

Our core value is simplicity which leads us to one final simple idea. We believe that the present moment is the greatest gift that there is here on earth. Therefore, our products seek to become the perfect gift people can buy for themselves and share with others worldwide.

Please contact us to bring more presence to your life and your community.

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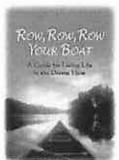
### **Our Community**

We are pleased to be developing a growing Now Watch community to show our appreciation for all those who share the vitality springing forth out of the present moment.

The simple goal of our community is to link together people and resources that can help deepen the human connection to NOW.

Please contact us at info@thenowwatch.com if you'd like to be what we'll consider a friend The Now Watch.

## Featured Friends of The Now Watch



STEVEN LANE TAYLOR

Steven Lane Taylor is the Author of "Row Row Row Your Boat," a profoundly simple guide to living in harmony with life's divine flow. We love its simplicity and call to pay attention to what's happening in your life right Now. We also love walking down the street singing this little well-known jingle. Try it, singing softly to yourself, and see how quickly your perspective changes. Please check out www.rowrowrow.com to learn more about Steven, his book, his talks, and his workshops.

---- Buy This Book on Amazon.com



Raphael Cushnir is a popular contributor to O, the Oprah magazine. He is the author of several books including "How Now: 100 Ways to Celebrate the Present Moment," a well rounded mix of suggestions to bring more presence to people's lives making it a Now Watch favorite. Please check out www.hownow100.com to learn more about Raphael's book as well as www.innermanagement.biz for more about his talks, training programs, and consultations.

#### <---- Buy This Book on Amazon.com

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### **Contact Us**

For questions, comments, orders, or anything else please contact us at:

info@thenowwatch.com

20 East 9th Street, Suite 6W New York, NY 10003 Phone: (212) 982-2336 Fax: (212) 551-7806

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### Store Locations

If you are in the New York Metropolitan area and want to see Our Original Now Watch in person... please check out.

## **Brooklyn**

1:46 Watch Repair and Design Collective 146 North 7th Street

Brooklyn, NY
(By Bedford Avenue stop on the L train in Williamsburg) Map It

### Néda

A Contemporary Designer Boutique
There are two super cool stores in Brooklyn:

- Cobble Hill at 302 Court Street Map It
- Park Slope 413A Seventh Avenue Map It

#### Manhattan

Christopher's
7 Greenwich Avenue
New York, NY
(Corner of Greenwich Avenue and
Christopher Street in the West Village) Map It

#### Westchester

Beginnings Bleus 575 Main Street Armonk, New York Map It

Are you interested in showing The Now Watch product line in your store, boutique, gift shop, or e-tail site?

From New Age shops and Yoga outlets to mainstream shopping malls, The Now Watch product line seeks a dwerse range of purchasing opportunities for our customers.

If you believe any of the NOW Watch products within our line are a good fit for your retail business, please contact us at info@thenowwatch.com to join our expanding Now Watch Network.

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# **EXHIBIT G**

mayor maps made propping man more Case 1:08-cv-03466-VM-RLE

<u>Google</u>

now watch

Document 13-9

Filed 06/06/2008 Page 2 of 3

Search | Advanced Search | Preferences

Web Video Personalized Results 1 - 10 of about 71,700,000 for now watch. (0.10 seconds)

Signals Catalog

Gifts That Inform, Enlighten & Entertain. Supports Public Toponsored Links Signals.com

**Watch Now** 

www.Target.com

Watch Now Online, Shop Target.com.

## The Now Watch - Because the Time is Always Now

Because the Time Is Always Now! Order The Now Watch · Store Locations · About Us · Our Community · Contact Us · Home ...

www.thenowwatch.com/ - 8k - Cached - Similar pages - Note this

# Watch Now - Full length movies and TV shows for free from BitTorrent

Download thousands of movies and TV shows from BitTorrent. www.bittorrent.com/watchnow - 46k - Cached - Similar pages - Note this

## The Time Is Nigh: NOW Watch is Always Right

Jul 16, 2007 ... Even a stopped clock is right twice a day but this watch is even more accurate It's always right because.

gizmodo.com/gadgets/the-time-is-nigh/now-watch-is-always-right-278824.php -Similar pages - Note this

## Now, watch me debate him. - By Christopher Hitchens - Slate Magazine

Sep 13, 2005 ... My old friend and frequent critic Geoffrey Wheatcroft once tried to define a moment of perfect contentment and came up with the idea of ... www.slate.com/id/2126121/ - 46k - Cached - Similar pages - Note this



### YouTube - Now watch this drive!

Now watch this drive! Hello, you either have JavaScript ... 16 sec - 京会公公分

www.youtube.com/watch?v=Z3p9y\_OEAdc

### washingtonpost.com: Before Golf, Bush Decries Latest Deaths In Mideast

Now watch this drive." The abrupt segue illustrates the dilemma Bush will face over the next month as he relaxes and works at his ranch in Crawford, Tex., ... www.washingtonpost.com/ac2/wp-dyn/A43789-2002Aug4?language=printer -Similar pages - Note this

### Watch Anime Now! - Watch Anime Online

Watch Full Streaming Naruto, Bleach, Claymore, School Days Episodes Online. watchanimenow.com/ - 49k - Cached - Similar pages - Note this

### Vongo - Choose Now. Watch Now.

All you can watch movie downloads with Vongo. Easy, convenient and legal full-length movie downloads. Try it now with our free trial.

www.vongo.com/ - 3k - Cached - Similar pages - Note this

### Netflix Online Movie Rentals - Rent DVDs, Classic Films to DVD New ...

Jan 16, 2007 ... Once it is made available to them as part of the phased roll-out, members will access instant movie watching by clicking on a "Watch Now" ...

www.netflix.com/MediaCenter?id=5384 - 21k - Cached - Similar pages - Note this

### **NOW Watch - ThisNext**

The NOW Watch, a ThisNext exclusive, is an innovative twist on that thing that we often allow to rule our frenetic, on-the-go lives - the watch. ... www.thisnext.com/item/02522C7E/NOW-Watch - 38k - Cached - Similar pages - Note this Sponsored Links

### Watches Date

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## Watch at Blue Nile

Forbes Favorite Online Jeweler. Free FedEx & 30-Day Returns. www.bluenile.com

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### Luxury Brand Name Watch

Save up to 30 - 60% in Brand name Free Second day on all Watches www.dexclusive.com

### Watch Now

Looking for Watch Now? Find exactly what you want today. Yahoo.com

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Big Variety- 40-80% Off All Watches Free Ship. Satisfaction Guaranteed. www.soliscompany.com

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